

# PARAGUAY

## BRIEFING TO THE UN COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

79<sup>th</sup> session August 2011

**AMNESTY  
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## INTRODUCTION

Amnesty International submits the following information for consideration by the UN Committee on the Elimination of Racial Discrimination (the Committee), in advance of its examination of Paraguay's initial report, submitted under article 9 of the International Convention on the Elimination of All Forms of Racial Discrimination (the Convention). In particular, this briefing raises concerns under articles 2, 5 and 6 of the Convention, in the light of recommendations from the Committee in its General Recommendation 23.

In this briefing, based on its research in Paraguay, Amnesty International sets out its concerns regarding Indigenous Peoples and racial discrimination. 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 [pueblos], with five linguistic sub-groups.

A 2008 national survey of Indigenous households<sup>1</sup> identified that 38.9 per cent of Indigenous people aged 15 years and over are illiterate (as opposed to 5.4 per cent among the whole population). 37.8 per cent of those interviewed only had access to water from rivers or lakes, which are often polluted and unclean. 87.8 per cent of Indigenous people had no medical insurance, and only 52 per cent are economically active (71 per cent among men, and 34 per cent of women).<sup>2</sup> The “situation of extreme exclusion” of Indigenous Peoples is identified under the United Nations Development Assistance Framework (UNDAF) for Paraguay.<sup>3</sup>

Paraguay ratified Convention 169 Indigenous and Tribal People's Convention of the International Labour Organization (ILO) in 1993, incorporating it in its domestic legislation by means of Law No. 234/93. Paraguay voted in favour of the adoption of the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) in the UN General Assembly in 2007. At the time, Paraguay noted that it had “participated in the negotiations in a constructive spirit”.<sup>4</sup>

There has been wide international recognition of the fact that Indigenous Peoples in Paraguay suffer serious and systematic violation of their rights. The Committee on the Economic, Social and Cultural Rights (CESCR),<sup>5</sup> the UN Permanent Forum on Indigenous

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<sup>1</sup> General Directorate of Statistics, Surveys, and Census (*Dirección General de Estadística, Encuestas y Censos* DGEEC), *Principal Results of the Survey of Indigenous Homes, Demographic, Social and Economic Characteristics*, [*Resultados Principales del la Encuesta de Hogares Indígenas, Características Demográficas, Sociales y Económicas*], 2008.

<sup>2</sup> *Ibid.*

<sup>3</sup> UNDAF, p.21.

<sup>4</sup> <http://www.un.org/News/Press/docs//2007/ga10612.doc.htm>.

<sup>5</sup> See UN Doc. PARAGUAY, E/C.12/PRY/CO/3, 4 January 2008. The CESCR expressed its concern with: “the persistence of striking disparities in the enjoyment of economic, social and cultural rights in Paraguayan society”; the increase in the number of persons living in extreme poverty despite economic

Issues,<sup>6</sup> the ILO,<sup>7</sup> the UN Special Rapporteur on Indigenous Peoples,<sup>8</sup> and the Inter-American Commission and Court<sup>9</sup> have all noted their concerns about land rights, lack of consultation and consent, and the socio-economic status of Indigenous Peoples in Paraguay.

Non-governmental groups have consistently spoken out about the welfare and socio-economic circumstances of Indigenous Peoples, and organizations such as Tierraviva, CODEHUPY, the Catholic Bishops' Conference and the Coordinator for the Self-Determination of Indigenous

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growth over recent years; the slow pace of agrarian reform; the 'situation of farmers and the indigenous population, who do not have access to their traditional and ancestral lands; and "the concentration of land ownership in the hands of a very small proportion of the population."

<sup>6</sup> In 2009, the United Nations Permanent Forum on Indigenous Issues (UNPFII) visited Paraguay and in its subsequent report it identifies a significant deterioration in the living conditions of Indigenous Peoples in the Chaco area of Paraguay, the continuing existence of forced labour and servitude, and problems relating to land ownership. The Permanent Forum also drew attention to the lack of access Indigenous groups in the Chaco to health and education services. <sup>6</sup> Mission of the UNPFII to Paraguay, Recommendations and Summary of the Report, 18 January 2010 (E/C.19/2010/5).

<sup>7</sup> In relation to Paraguay, the ILO Committee of Experts has stressed the need for a comprehensive and nation-wide consultation process: "[T]he consultation envisaged by the Convention goes beyond consultation on specific cases and requires the whole system for the application of the provisions of the Convention to be implemented in a systematic and coordinated manner in cooperation with Indigenous peoples. This presupposes a gradual process of the establishment of appropriate bodies and machinery for this purpose." (CEACR: Individual Observation concerning Indigenous and Tribal Peoples Convention, 1989 (No. 169) 2009, para 4).

<sup>8</sup> In recent years, the UN Special Rapporteur on Indigenous Peoples has addressed the Paraguayan government on several occasions: regarding the impact of deforestation on the livelihood of Ayoreo indigenous groups, including those living in voluntary isolation; the underlying problem posed by lack of land titles, which increase the risk they face of intrusion by third parties; and human rights violations caused by the spraying of agro-chemicals used in the soy industry.

Report by the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, James Anaya, 15 September 2010, A/HRC/15/37/Add.1

Report by the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, James Anaya\* Addendum. Summary of communications transmitted and replies received, 18 September 2009, A/HRC/12/34/Add.1

<sup>9</sup> Case Yakye Axa Indigenous Community Vs. Paraguay, judgment of 17 June 2005  
[http://www.corteidh.or.cr/docs/casos/articulos/seriec\\_125\\_ing.pdf](http://www.corteidh.or.cr/docs/casos/articulos/seriec_125_ing.pdf);

Case Sawhoyamaya Indigenous Community Vs. Paraguay, judgment of 29 March 2006  
[http://www.corteidh.or.cr/docs/casos/articulos/seriec\\_146\\_ing.pdf](http://www.corteidh.or.cr/docs/casos/articulos/seriec_146_ing.pdf);

Case Xámok Kásek Indigenous Community Vs. Paraguay, judgment of 24 August 2010  
[http://www.corteidh.or.cr/docs/casos/articulos/seriec\\_214\\_ing.pdf](http://www.corteidh.or.cr/docs/casos/articulos/seriec_214_ing.pdf).

Peoples (Coordinadora por la Autodeterminación de los Pueblos Indígenas, CAPI) have denounced the displacement of Indigenous Peoples from their traditional lands. The National Federation of Workers (Confederación Nacional de Trabajadores, CNT) has noted the absence of effective consultation measures in relation to legislation significantly affecting Indigenous Peoples.<sup>10</sup>

## 1. THE LACK OF AN EFFECTIVE FRAMEWORK FOR THE PROTECTION OF CONVENTION RIGHTS (ARTICLE 2)

### 1.1 OFFICIAL ACKNOWLEDGEMENT OF MARGINALISATION

Historically, Paraguay's Indigenous Peoples have been marginalized and subjected to grave and systematic abuses. This history stretches back many generations and has been well documented. A Truth and Justice Commission, which investigated abuses committed during the military regime of General Stroessner and the transition to democracy (1954-2003), 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>11</sup> The Commission found that although 20 years had passed since the end of the military regime, the State was responsible for human rights violations against Indigenous Peoples that continue to occur, and that permanently affect their life chances, culture and land rights. It concluded that "the State's tolerance of practices of racial discrimination by non-Indigenous Peoples in Paraguay, has led to violations of the right to life and integrity of Indigenous Peoples."<sup>12</sup>

Paraguayan authorities have acknowledged the past and present human rights violations faced by Indigenous Peoples; indeed the respect for the country's Indigenous heritage was a central feature of the current president's electoral campaign. In his inaugural speech on 15 August 2008, President Lugo stated "[t]hese [Indigenous] lands from now on will be sacred not only for their culture...but also sacred in the application of the law...No white person who negotiates indigenous lands...will enjoy the same impunity that they have in the past". A month later in a speech before the UN General Assembly, the newly-incumbent President stated that "the recognition of Indigenous Peoples as participants in political and participatory State processes continues to be a pending task, a sad expression of intolerance

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<sup>10</sup> The National Union of Workers (CNT) has frequently referred to the need for Paraguay to consult with Indigenous Peoples. In a communication sent to the ILO Committee of Experts in 2001, the CNT noted Paraguay had not consulted Indigenous Peoples in relation to Bill No. 2822, a Bill that would govern the operation of the institutions responsible for the national Indigenous policy.

<sup>11</sup> Truth and Justice Commission [Comisión de Verdad y Justicia], *Final Report* [Informe Final/Anive haguã oiko], August 2008.

<sup>12</sup> *Ibid*, Volume III, at 226. ["La tolerancia por parte del Estado de prácticas de discriminación racial por parte de la sociedad no indígena, ha significado también la violación del derecho a la vida y a la integridad de los indígenas."].

in many regions”.<sup>13</sup>

Nevertheless, in key opportunities for acknowledging human rights challenges, the Paraguayan government has shied away from recognising the persistent problems. In its written and oral presentations under the Universal Periodic Review (UPR) in February 2011, there was no mention of the ongoing violation of Indigenous Peoples rights. Instead, reference was made to the “historical exclusion”<sup>14</sup> of Indigenous Peoples in Paraguay, and to government plans and actions.

## 1.2 DOMESTIC FRAMEWORK (ARTICLE 2; GENERAL RECOMMENDATION 17)

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>15</sup> passed in 1981, and subsequently amended in 1996.<sup>16</sup> However, this law does not contain any provisions relating to overcoming discrimination. In 1992 a new Constitution gave recognition to Indigenous Peoples as such.<sup>17</sup>

### 1.2.1 – THE NATIONAL INDIGENOUS INSTITUTE (INDI) AND OTHER INSTITUTIONS

Law 904/81 set up the country’s national Indigenous Institute [Instituto Paraguayo del Indígena, INDI], the government institute entrusted with implementation of Indigenous policy. With the amendments to Law 904/81 in 1996,<sup>18</sup> the Institute passed from the purview of the Ministry of Defence to the Ministry for Education and Culture.<sup>19</sup> The Institute does not have institutional autonomy, nor does it have functional authority over other government departments or ministries in the government hierarchy and is not currently

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<sup>13</sup> <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N08/517/52/PDF/N0851752.pdf?OpenElement> [“El reconocimiento de los pueblos indígenas como partícipes de los procesos políticos y participativos de Estado sigue siendo una materia pendiente y una triste expresión de intolerancia en muchas regiones.”]

<sup>14</sup> Human Rights Council, Universal Periodic Review 10<sup>th</sup> Session, 2 February 2011. Oral intervention of Humberto Blasco before the Universal Periodic Review of Paraguay.

<sup>15</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>16</sup> Law N° 919/96.

<sup>17</sup> Constitution, Article 62.

<sup>18</sup> Amendments introduced through Law N° 919/96

<sup>19</sup> Art. 30 Ley 919/96.



required by its mandate to agree policy it designs or implements with the Indigenous Peoples on whose behalf it works. As the law establishing the INDI makes no mention of discrimination, the Institute has no specific mandate with regard to anti-discrimination measures.

In addition to the INDI, some directorates within government departments and ministries play a role in providing tailored services and policies to Indigenous Peoples. However, as recognised by Paraguay's United Nations Development Assistance Framework (UNDAF), which defines the overall strategy and actions for the UN presence in Paraguay, there is a general "absence of policies directed at Indigenous Peoples".<sup>20</sup>

Although some positive cross-cutting and sector-specific policy developments made over recent years can be identified,<sup>21</sup> Amnesty International considers that these are generally insufficient to address the inequalities in the enjoyment of rights among Indigenous Peoples in comparison to the non-Indigenous population, as well as the systematic violation of Indigenous Peoples' rights, and the weaknesses in the institutional framework that allows these rights to be exercised.

#### 1.2.2 INTER-INSTITUTIONAL COMMISSION FOR THE COMPLIANCE WITH INTERNATIONAL JUDGEMENTS [COMISIÓN INTER-INSTITUCIONAL PARA EL CUMPLIMIENTO DE LAS SENTENCIAS INTERNACIONALES] (CICSI)

In February 2009 an "Inter-Institutional Commission for the Compliance with International Judgements" [Comisión Inter-Institucional para el Cumplimiento de las Sentencias Internacionales] (CICSI) was created by Presidential decree to oversee and coordinate actions by the Executive towards complying with all judgements and recommendations from the Inter-American human rights system. Despite this positive step the State has yet to be able to provide a resolution of the three cases in which the Inter-American Court of Human Rights condemned Paraguay for the violations of Indigenous People's rights and ordered the restitution of ancestral land to the communities involved.

CICSI is not mandated to coordinate actions by the Legislative and Executive towards implementation of these judgements, which is a significant weakness given that one of the main challenges towards upholding relevant standards is the lack of consistency with which different areas of the State approach Paraguay's obligations.

Amnesty International recognises the challenges of implementing judgements that require concerted, timely action by different government departments, and principled engagement with non-State actors who may disagree with the actions proposed. The organization remains

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<sup>20</sup> United Nations Development Assistance Framework, "*Framework for Cooperation of the UN in Paraguay, 2007-2011*" ["UNDAF, Marco de Cooperación de las Naciones Unidas en Paraguay, 2007-2011] [unofficial translation], p14.

<sup>21</sup> Amnesty International considers the establishment of a new Indigenous health directorate within the Ministry of Health in June 2010 to be a positive example. Furthermore, its move to include ethnicity in forms used across the public health system as a means to monitor the implementation and effectiveness of policies is a positive first step.

concerned, however, that the continuing inadequacy of existing procedures for resolving land claims – the very same problem that gave rise to the human rights violations identified by the Inter-American Court – remains the key obstacle to upholding these communities' land rights.

### 1.2.3 CENSUS

In 1981 Paraguay conducted its first census of Indigenous Peoples. This significant step, followed up in 2002 by a second census, was aimed at providing information which could be fed into policy design and implementation. The census process is an important one insofar as it sheds light on areas of inequality, and should be continued. **Amnesty International urges the importance of using census information to identify systematic rights violations and areas warranting improvement, and in designing, implementing and evaluating policies to address any areas of inequality in rights.**

### 1.2.4 ANTI-DISCRIMINATION BILL (ARTICLE 2.2)

Amnesty International believes stronger and more coordinated institutional responses are needed to address discrimination as a violation of Indigenous Peoples rights in Paraguay. In particular, the organization is concerned that there is still no 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. An anti-discrimination law<sup>22</sup> tabled in Congress in May 2007, and subsequently discussed widely with a range of human rights organizations and others has yet to be tabled before the plenary.

**Amnesty International believes that approving and implementing anti-discrimination legislation that adheres to international human rights standards would play an important role in promoting Indigenous Peoples' rights and in requiring concrete actions to uphold them.**

### 1.2.5 ROLE OF PUBLIC OFFICIALS (ARTICLE 7; GENERAL RECOMMENDATION 13)

In addition, proactive steps must be taken to ensure that legislators, public servants and judges alike are fully aware of Paraguay's obligations under the Convention, and other international human rights standards on Indigenous Peoples' rights. These should include compulsory training for public officials on Indigenous Peoples' rights. Greater understanding of these standards and norms, as well as acceptance of individual and institutional responsibility to be accountable in interpreting and implementing them, are essential to overcoming discrimination in Paraguay.

### 1.2.6 ARTICLE 14 OF THE CONVENTION

Paraguay has not made a declaration to recognise the competency of the Committee to receive and consider communications from individuals or groups of individuals under Article 14 of the Convention. Such a declaration would demonstrate Paraguay's commitment to upholding the rights of the Convention for individuals and groups within the country.

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<sup>22</sup> Draft Law "Against all forms of discrimination" ("Contra toda forma de Discriminación") presented to Parliament by Senators Miguel Adbón Saguier and Carlos Filizzola, 24 May 2007.

Amnesty International is concerned, in addition, by the failure of the State to respond substantively to a request made under the Convention's Early Warning Procedure in May 2010<sup>23</sup> regarding the plight of the Yakye Axa and Sawhoyamaya communities.

**Recommendations:**

- Provide an annual update on progress in implementing recommendations of the Truth and Justice Commission, especially with regards measures taken towards combating discrimination;
- Seek technical assistance from relevant human rights bodies and experts (including the UN Special Rapporteur on Indigenous Peoples, the ILO, the Office of the High Commissioner for Human Rights and the Inter-American Commission on Human Rights) to design and implement a comprehensive review of the existing institutional framework implementing policies directed at Indigenous Peoples. Such a review should produce a proposal for reform of these same institutions. For this purpose, the Paraguayan government should issue a direct invitation to the UN Special Rapporteur on Indigenous Peoples, to underscore its express interest in a visit from this particular mandate, in line with the standing invitation to Special Procedures;
- Ensure that the INDI and other government institutions assist in ensuring Indigenous Peoples can access their rights by informing government of its obligations under international law;
- Provide information regarding concrete actions to be taken to respond to the recommendations accepted by Paraguay during the UPR process regarding the human rights of Indigenous Peoples.<sup>24</sup> In particular those recommendations calling on Paraguay to comply fully with judgements by the Inter-American Court of Human Rights on the violation of the rights of the Yakye Axa, Sawhoyamaya and Xakmok Kasek Indigenous communities;<sup>25</sup>

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<sup>23</sup> Letter written to Paraguay from CERD Committee as part of the Early Warning Procedure, 31 May 2010, available at

[http://www2.ohchr.org/english/bodies/cerd/docs/early\\_warning/Paraguay31052010.pdf](http://www2.ohchr.org/english/bodies/cerd/docs/early_warning/Paraguay31052010.pdf)

<sup>24</sup> A/HRC/17/18, paragraphs 84.16, 84.20, 84.42, 84.44-46, 85.61-72, and 86.2, 86.5.

<sup>25</sup> Ibid, paragraphs

85.68. Fully implement the rulings of the Inter-American Court on Human Rights regarding indigenous land claims by the Yakye Axa and Sawhoyamaya indigenous communities quickly and effectively (Canada);

85.69. Take measures to implement rulings from the Inter-American Court of Human Rights on land rights of indigenous communities in Paraguay (Norway);

85.70. Implement the rulings of the Inter-American Court of Human Rights relating to the Yakya Axa and Sawhoyamaya communities, rendered in 2005 and 2006 respectively, which stipulate, particularly, that the lands claimed by these two communities must be restored to them (France);

- Ensure sufficient resources to the Indigenous Peoples Census, establishing a 10-year cycle for its work;
- Expedite discussion and passage of the anti-discrimination law, with a view to its approval during the next session of Parliament;
- Ensure all public officials involved in Indigenous issues are trained in obligations under international instruments such as the Convention, stressing the importance of implementing these obligations in their work;
- Make a declaration under Art. 14 of the Convention;
- Respond without further delay to the concerns raised in August 2010 under the Committee's Early Warning Procedure;
- Evaluate the work to date of the CICSJ with a view to addressing problems in its response to cases regarding Indigenous Peoples rights.

## **2. PROPERTY, LAND, HOUSING AND CULTURE (ARTICLES 5(D)(V), 5(E)(III) AND 5(E)(VI); GENERAL RECOMMENDATION 23, PARAGRAPHS 4(E) AND 5)**

The 1992 Constitution establishes Indigenous Peoples' right to hold communal property, and the State's responsibility to provide such lands free of charge.<sup>26</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>27</sup> 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>28</sup>

The findings of the Paraguayan Truth and Justice Commission 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 the political or military allies of General Stroessner.

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<sup>26</sup> Constitution, Art.64.

<sup>27</sup> DGEEC], *II National Indigenous Census of Population and Housing, 2002*, [*II Censo Nacional Indígena de Población y Vivienda, 2002*], p.19.

<sup>28</sup> See, International Labour Conference: Observations and information concerning particular countries, 91<sup>st</sup> session, 2003, provisional record.

These figures indicate that the domestic legal and administrative measures for addressing Indigenous land claims in Paraguay are inadequate. This conclusion has been reached consistently by international human rights bodies scrutinising Paraguay's record on Indigenous Peoples' rights.<sup>29</sup> Furthermore, the Inter-American Court of Human Rights has ruled three times that Paraguay has violated the rights of Indigenous Peoples with regards their ancestral land.

Amnesty International is concerned that deep-rooted patterns of discrimination are perpetuated by the ongoing failure to affirm and implement Indigenous Peoples' rights, in particular their right to own, develop, control and use their communal lands, territories and resources. The organisation has been concerned to hear government authorities from both the Executive and Legislative citing private interests in particular areas of land as justification for non-recognition of Indigenous Peoples' claims to that same land.<sup>30</sup> These statements infer an attitude that Indigenous Peoples' rights are less legitimate and should be surrendered to private interests in land based on economic imperative, even where clear guidance has been given to Paraguay as to the legitimacy of specific claims.<sup>31</sup>

On concluding a visit to Paraguay in September 2010, the Inter-American Commission's Rapporteur on the Rights of Indigenous Peoples, Dinah Shelton, identified "serious structural problems that stand in the way of compliance with property rights over the ancestral territories of indigenous peoples".<sup>32</sup> In particular, she highlighted that "the creation and consolidation of large estates, which predates the development of democratic governments, has left a legacy not only in terms of the problems that indigenous peoples face today, but also in terms of the legal system of expropriation, particularly in cases in which private owners are not willing to restore indigenous territorial property confiscated in earlier times".<sup>33</sup>

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<sup>29</sup> UN Committee on Economic, Social and Cultural Rights, PARAGUAY, E/C.12/PRY/CO/3, 4 January 2008, E/C.12/PRY/CO/3, para. 23 (b); UN Permanent Forum on Indigenous Issues, *Mission to Paraguay: Report and Recommendations*, Recommendations (section D); ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR): Individual Observation concerning Indigenous and Tribal Peoples Convention, 1989 (No. 169) 2010, p.3.

<sup>30</sup> Statements made during meetings between Amnesty International and members of the Paraguayan Legislative and Executive in November/December 2008, March 2009 and November 2010.

<sup>31</sup> Inter-American Court, "When they apply these standards to clashes between private property and claims for ancestral property by the members of indigenous communities, the States must assess, on a case by case basis, the restrictions that would result from recognizing one right over the other. Thus, for example, the States must take into account that indigenous territorial rights encompass a broader and different concept that relates to the collective right to survival as an organized people, with control over their habitat as a necessary condition for reproduction of their culture, for their own development and to carry out their life aspirations. Property of the land ensures that the members of the indigenous communities preserve their cultural heritage." *Yakye Axa* judgement, para 146.

<sup>32</sup> <http://www.cidh.oas.org/Comunicados/English/2010/90-10eng.htm>

<sup>33</sup> <http://www.cidh.oas.org/Comunicados/English/2010/90-10eng.htm>

In this respect, Amnesty International draws attention to the recent guidance provided by the Inter-American Court, which sets out standards for reconciling competing claims to property by members of Indigenous Peoples and third parties. The Court has also noted that the failure of the State to take into account the special relationship an Indigenous community has with the land when balancing two conflicting claims constitutes discriminatory treatment:

*The Court repeats once more that when it comes to land being used for production, it is the State's responsibility through the competent national bodies to determine and take into account the special relationship that the indigenous community has for the land it is claiming at the moment of deciding between the two rights. Otherwise, land replevin claim rights would make no sense and not offer the real possibility of recovering traditional lands. In limiting the effective fulfillment of the indigenous communities' right to property in this way, the State not only violates its obligations derived from the provisions of the Convention related to the right to property, but also fails to fulfill its responsibility regarding the guarantee of an effective remedy, constituting discriminatory treatment that produces social exclusion.<sup>34</sup>*

## 2.1 CASE STUDY: THE YAKYE AXA AND SAWHOYAMAXA CASES: INADEQUATE LAND CLAIMS MECHANISMS AS AN OBSTACLE TO IMPLEMENTATION OF INTER-AMERICAN COURT JUDGEMENTS (ARTICLE 5(D)(V); GENERAL RECOMMENDATION 23 PARAS 4(E) AND 5)

The situation of two Enxet Indigenous communities from the Bajo Chaco area of central Paraguay, the Yakye Axa and Sawhoyamaxa, is emblematic of the wider problems faced by Indigenous Peoples claiming ancestral land in Paraguay. These communities have been claiming their ancestral land since the 1990s. Denied access to their lands, both the Yakye Axa and Sawhoyamaxa communities live on a narrow strip of infertile, inhospitable land by the side of the Pozo Colorado – Concepción highway; as a result they are unable to sustain their traditional activities - such as hunting, fishing and gathering honey - or their cultural and spiritual practices.

The absence of an effective and coherent land claims mechanism, and the exhaustion of all available administrative procedures in Paraguay,<sup>35</sup> forced both communities to take their cases to regional human rights mechanisms. These two judgements clearly express the violations faced by the communities, and the measures that the State must take to provide reparation and ensure similar violations are not committed again. Despite the weight of these judgements and the deadlines established by the Court, the communities' rights have still not

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<sup>34</sup> Xakmok Kasek judgement, para.149.

<sup>35</sup> The summary proceedings of both cases before the Inter-American Commission on Human Rights and the Inter-American Court provide a detailed description of the efforts made by the Indigenous communities along the years to have their human rights recognized and implemented. See case files: [http://www.corteidh.or.cr/expediente\\_caso.cfm?id\\_caso=162](http://www.corteidh.or.cr/expediente_caso.cfm?id_caso=162) (Sawhoyamaxa) and [http://www.corteidh.or.cr/expediente\\_caso.cfm?id\\_caso=106](http://www.corteidh.or.cr/expediente_caso.cfm?id_caso=106) (Yakye Axa).

been upheld. In fact, their claims are still questioned by some State authorities.<sup>36</sup>

As long as Paraguay fails to comply with these Court orders, the violation of rights identified in the judgements continues,<sup>37</sup> with an ever greater impact on the communities' livelihoods, and the continuing degradation of their cultural identity and heritage. Furthermore, the continuing non-compliance with these important international legal precedents indicates an absence of political will to implement measures that would also bring it into compliance with standards required under the Convention, measures that are also needed to process effectively and efficiently the land claims of other Indigenous communities.

In particular, Amnesty International has identified three main areas of concern arising from the response of the Paraguayan state to these judgements.

#### 2.1.1 REJECTION OF EXPROPRIATION BILL (GENERAL RECOMMENDATION 23, PARA 5)

The rejection of a bill for the expropriation of the ancestral lands of the Yakye Axa,<sup>38</sup> presented by President Lugo in November 2008,<sup>39</sup> by the plenary of the Paraguayan Senate in October 2009 represents a failure to protect the communities' rights to land and to uphold the State's national and international obligations.

Given the rejection of this bill, and the likelihood that any further attempt to attain Congressional approval for the expropriation of Indigenous lands could follow a similar fate, **Amnesty International has called upon the Executive to renew with greater effort attempts to negotiate directly with the current owners of the land.** Amnesty International is aware that some attempts have been made to pursue such negotiations, but is concerned that efforts have been insufficient and unreasonably delayed.

#### 2.1.2 ALTERNATIVE LANDS PROPOSALS (GENERAL RECOMMENDATION 23, PARAGRAPHS 4(E) AND 5)

Amnesty International is concerned by evidence that the Paraguayan government has prioritised pursuing alternative land options for the two communities – encouraging them to accept a second-best solution to their land claims – without having first exhausted with due diligence the possibility to return the land “they traditionally owned or otherwise inhabited” with which they have a deep-rooted cultural attachment so that they are able to “revitalize

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<sup>36</sup> Statements made during meetings between Amnesty International and members of the Paraguayan Legislative and Executive in November/December 2008, March 2009 and November 2010.

<sup>37</sup> The Inter-American Court found violations of the rights to fair trial and judicial protection, to property, and to life. Sawhoyamaxa, para.248 (1-5); Yakye Axa, para. 242 (1)

<sup>38</sup> Alongside negotiation, expropriation is one of two legal means by which the Paraguayan state can achieve the return of the lands to the communities.

<sup>39</sup> Draft law [Anteproyecto] “declaring of social interest and expropriating on behalf of the INDI for its subsequent adjudication to the Yakye Axa Indigenous Community...”, [“Que declara de interés social y expropria a favor del INDI para su posterior adjudicación a la Comunidad Indígena Yakye Axa...”]. Signed on 20 November 2008.

their cultural traditions and customs” by pursuing negotiations with the current landowners.<sup>40</sup>  
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The communities are dependent upon irregular food and water supplies and have inadequate access to education. Combining this situation with the length of their struggle raises concerns that, in the absence of any other options, the communities would effectively be pressured to accept a second-best solution as the only way out of their current situation. **For this reason, in presenting any such proposal, Amnesty International has recommended that the State must refrain from any coercion, and ensure that any proposal of alternative solutions is made with due respect to the communities’ decision-making processes, providing them with full information, in line with requirements for free, prior and informed consent. Amnesty International looks to the INDI to fulfil the crucial role of highlighting relevant standards in this respect.**

### 2.1.3 LEGITIMATE DECISION-MAKING PROCESSES – FREE PRIOR AND INFORMED CONSENT

It is of considerable concern that key governmental institutions appear to be misrepresenting the claims, rights and decisions, and decision-making processes of Indigenous communities. A proposal for alternative lands was made to the Yakye Axa in early 2010. The proposal, despite being inherently inferior in the eyes of the community, was initially accepted by them, as they were desperate to find some kind of solution to their current plight. However, in subsequent months, the failure of the government to follow up its own proposal in a coordinated and expedient manner put the feasibility of the proposal into doubt. As a result, in the context of years of governmental failures in responding to the community’s legal claim to their ancestral lands, the community expressed their loss of faith by withdrawing their acceptance of the alternative lands. Amnesty International is concerned that members of the government have since blamed the community for the failure of this alternative lands proposal. **Amnesty International urges the Paraguayan government to take actions aimed at generating trust, and strongly condemns any attempts by government to undermine the community’s rights by calling into question its legitimate decision-making processes.**

#### **Recommendations:**

- Take in good faith all necessary administrative and legislative measures to resolve the situation of the Yakye Axa and Sawhoyamaya communities, by returning without further delay ancestral land to them, and other communities with outstanding land claims;
- Ensure that bodies and processes designed to assist with implementing international obligations are capable of fulfilling this mandate.

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<sup>40</sup> Amnesty International acknowledges recent information indicating that negotiations are currently underway with the current landowners.

<sup>41</sup> For an examination of the due diligence responsibility in administrative procedures regarding alternative lands proposals, see Xakmok Kasek, Para.127-131



## 2.2 IMPACT OF NON-STATE ACTORS ON INDIGENOUS COMMUNITIES (ARTICLES 2(D), 5 AND 6)

Many industries dependent on land, including soy and wheat farming and cattle ranching, are undergoing rapid expansion. This has led to an increased competition for land which has often created further difficulties for Indigenous Peoples struggling to realize their rights.

### 2.2.1 CASE STUDY: SPRAYING OF AVÁ GUARANÍ COMMUNITIES IN ITAKYRY WITH PESTICIDES (ARTICLES 5(B), 5(E) AND 6)

In November 2009, Amnesty International expressed its concern at the threat of eviction against five Avá Guaraní Indigenous communities (around 140 families) in Itakyry district, eastern Paraguay. In 1996 and 1997 INDI acquired 2,638 hectares of the Indigenous communities' ancestral land on their behalf. However ownership of the land is being challenged by farmers from over the nearby border with Brazil, who use the land to grow soya.

The organization understands that the president of the Senate Human Rights Commission called on the Vice-Minister of Interior to schedule the eviction during a meeting with the Brazilian soy farmers claiming to be in possession of the lands, representatives of the INDI, and the communities' lawyers. This was not the first time the communities had been threatened with eviction.

Although the eviction order was subsequently cancelled, police, a prosecutor and over 50 men reportedly representing Brazilian soya farmers claiming ownership of the land arrived in the Itakyry district to try and remove the communities by force on 6 November 2009. Indigenous people responded using their homemade bows and arrows. Later that day, an aeroplane arrived and sprayed directly above their homes with what are believed to be toxic pesticides normally used on soya crops. The aeroplane was not circulating over an area where crops were being grown. Over 200 people were affected, reporting sickness and fainting among other symptoms. At least seven people were taken to hospital.

On 10 November 2009, President Lugo ordered an investigation into the use of toxic chemicals against Indigenous Peoples in Itakyry, and the Health Minister and INDI repudiated the spraying. The INDI filed a complaint [denuncia] for coercion and improper use of pesticides before the public prosecutor. Investigations, though opened, have not been duly pursued and no prosecutions have been made. The Indigenous communities' land claim has not yet been resolved and the insecurity of their situation remains. The failure to resolve this land claim, and to conclude investigations into the alleged use of pesticides that lead to identifying those responsible, provide a further example of the serious difficulties faced by Indigenous Peoples in accessing justice and obtaining redress where human rights abuses are committed.

### 2.2.2 CASE STUDY: THREATS AND INTIMIDATION OF KELYENMAGATEGMA COMMUNITY IN PUERTO COLÓN BY NON-STATE ACTORS (ARTICLES 2(D), 5(B) AND 6)

The Kelyenmagategma community, who live in Puerto Colón near Concepción, started legal proceedings in Paraguay for the restitution of part of their ancestral land in October 2000. The community states that their traditional habitat comprises the settlement where they live, as well as the area where they carry out their traditional activities such as fishing and

hunting, which are central to their way of life. In 2002 a private company, El Algarrobal S.A. obtained 31,000 hectares of land, a small proportion of which have been being claimed by this Enxet community. The community until very recently lived on a very small settlement - less than three hectares. Although their land claim has not been fully addressed, the community have recently started to relocate to land acquired on their behalf by the State.

After the failure of the Paraguayan authorities to deal with the claim, the community took the case to the Inter-American Commission of Human Rights, with the support of the NGO Tierraviva. They claimed that their rights to life, to judicial protection, to humane treatment, to property and to privacy have been violated. In 2007 the Commission declared the petition admissible.

Amnesty International is seriously concerned that despite the continuous threats against the community, highlighted by the Inter-American Commission in its decision to admit the case in July 2007, the Kelyenmagategma community have received virtually no protection from local authorities. This problem was highlighted during the visit of Inter-American Commissioner Dinah Shelton to the Kelyenmagategma community in September 2010. As Shelton, her colleagues, community members and lawyers working for the community tried to access the land to visit the community, they were stopped by individuals working for El Algarrobal. They were prevented from continuing to the community for approximately four hours. When the two leaders of the community asked the employees to allow the delegation through, they received death threats. The delegation eventually managed to reach the community settlement by going through another property.<sup>42</sup>

Only three months later, in December 2010, a judge from the Court of the 13<sup>th</sup> Circuit [Juzgado del 13er. Turno] ordered the eviction of the community, despite the existence of provisional measures from the Inter-American Commission (in place since 2004 and updated in 2010) that order the State to “ensure the beneficiaries can continue living in the ancestral territory they claim without any type of coercion or threat”<sup>43</sup> until the Inter-American human rights system has taken a final decision on their case. This ruling undermines the community’s right not to be forcibly removed from their lands and to be involved in decisions that relate to them.<sup>44</sup>

This case illustrates the failure of State authorities to address public security risks faced by Indigenous communities who are claiming land currently in the hands of non-State actors. The absence of State authorities, and their failure to respond to calls for help from Indigenous communities in the face of security threats, has been illustrated in a number of

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<sup>42</sup>Amnesty International, Paraguay: Indigenous leaders receive death threats (Index AMR 45/005/2010)  
<http://www.amnesty.org/en/library/info/AMR45/005/2010/en>

<sup>43</sup> “asegurar que los beneficiarios puedan continuar habitando el territorio ancestral reclamado sin ningún tipo de coacción o amenaza”, No.5 of the precautionary measures, cited in paragraph 13 of the report N° 55/07, PETICIÓN 987-04, COMUNIDAD INDÍGENA KELYENMAGATEGMA DEL PUEBLO ENXET-LENGUA Y SUS MIEMBROS vs. PARAGUAY, 24 de julio de 2007.

<sup>44</sup> UN Declaration on the Rights of Indigenous Peoples, articles 10 and 19, A/RES/61/295.

other cases.<sup>45</sup>

The failure to investigate and prosecute cases in which Indigenous communities, exposed to increased risk of threats, eviction and violence as a result of their insecurity of land titles, perpetuates a cycle of disadvantage and discrimination. Furthermore, the failure to take steps towards preventing abuses in such situations by providing effective policing, and protection in the presence of threats, leads to ongoing violations and widespread impunity.

**Recommendations:**

- Ensure that human rights obligations, including rights under the Convention, are adhered to when facilitating the expansion of agro-industry;
- Ensure that no titles, licenses or other rights are granted over land claimed by Indigenous communities before these claims are adequately addressed;
- Ensure competing claims over land are adequately addressed with due regard to Indigenous communities' right to traditional lands;
- Protect Indigenous communities from being subjected to forced evictions, by either government agents or non-state actors, and ensure respect for the rights of all victims of forced evictions to an effective remedy and reparations, including restitution, rehabilitation, compensation, satisfaction and guarantees of non-repetition;
- Ensure non-state actors do not obstruct Indigenous Peoples' access to food, water and basic services. Undertake a review of resources for providing law enforcement in Indigenous areas with a view to ensuring that these resources are available to these communities in a timely fashion if needed. Investigate past failures of law enforcement authorities to respond to security threats and initiate disciplinary proceeding where appropriate;
- ensure that any abuses of the human rights of Indigenous Peoples by non-state actors are investigated by government authorities in good faith, and non-state actors found to be responsible are held accountable, including where appropriate by prosecution in line with internationally recognised fair trial standards;
- Implement in full the precautionary measures issued on behalf of the Kelyenmagategma community;

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<sup>45</sup> The September 2010 deaths of three members of the Yvyra'ijá Indigenous community, part of the Paĩ Tavyterā peoples living in the Yby Yaú district of Concepción department, elicited an insufficient response from authorities. According to NGOs who visited the area, a group of around 10 armed individuals arrived in the community and detained, then subjected to torture, three men. Their homes were burned and later, in the presence of their families, the three men were shot. Other community members were subsequently threatened and shot at until they fled the area. One man who refused to leave was found dead two weeks later. Reports suggest that after receiving a call for help, the police took 30 hours to arrive in the area. A formal investigation was opened in relation to these violent acts, allegedly committed in retaliation for the perceived involvement of the three men in the detention of an individual now being tried for drug trafficking, but no results have yet been obtained.

## 2.3 THE NEED FOR AN EFFECTIVE LAND CLAIM MECHANISM TO UPHOLD CONVENTION RIGHTS (ARTICLE 5(D)(V) AND 5(D)(VI))

Current procedures, from the filing of a land claim by an Indigenous community, to the eventual return of the land, are onerous, overly-bureaucratic, difficult to access and in many instances as outlined above, have been demonstrated to be unfit for purpose. In order that Paraguay may fulfil its obligations under the Convention, it is essential that procedures for addressing land claims are reformed. This step would be in keeping with the findings of the Inter-American Court and the UNFPII.

The Inter-American Court has stressed the need for a national land mechanism, and for this to be established with the full participation of Indigenous Peoples. It found the “abstract or juridical recognition of indigenous lands, territories, or resources” was “practically meaningless” if traditional lands are not “physically delimited and established.”<sup>46</sup> The Inter-American Court has now ordered Paraguay on three separate occasions to adopt into its domestic legislation, “... 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 fulfillment of their right to property.”<sup>47</sup>

Similarly, the UNFPII recommended the creation of a land registry for the Chaco region as a ‘matter of urgency’. It advised that “the registry should be undertaken, with an established deadline for its completion, and should be reviewed to assess the legitimacy of existing land titles, particularly in cases of land that is claimed by indigenous communities.”<sup>48</sup> To date, this has not happened.

Paraguay has acknowledged Indigenous land issues to be a key and persisting problem, resulting from many generations of discrimination, and recognised the need for legislation regarding land claims procedures before the Inter-American Court.<sup>49</sup>

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<sup>46</sup> See *Yakye Axa*, para: 143.

<sup>47</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>48</sup> Mission of the UNPFII to Paraguay, Recommendations and Summary of the Report, 18 January 2010 (E/C.19/2010/5), para 17, para 26. In February 2010, the UK, Germany, Korea and Spain called on Paraguay to establish an effective land claims mechanism before the UPR.

<sup>49</sup> See *Yakye Axa*, para 223-224. “it also acquiesces to the request to implement legislation that includes an effective and rapid recourse to elucidate situations of clashing rights, as in the case of the *Yakye Axa* and other communities of the Enxet Lengua people, for which it will conduct consultations with the direct beneficiaries, the indigenous peoples, pursuant to the provisions of [ILO] Agreement [No.]

In 2010, the Paraguayan Executive announced a “Public Policy Proposal for Social Development, 2010-2020” (the Proposal), in which “continuing the process of access and titling of communal land” to the 45 per cent of Indigenous communities in Paraguay who do not have land titles is set out as an objective.<sup>50</sup> The Proposal acknowledges the link between ancestral territory and Indigenous Peoples’ survival and ability to sustain their cultural identity. Importantly, the document also acknowledges that “[h]istory is characterised by discrimination and the weakness of State programmes aimed at this sector”.<sup>51</sup>

Amnesty International welcomes the identification of this issue within the Proposal, and the recent allocation of budget to secure ancestral lands,<sup>52</sup> but is concerned that it is not accompanied by an explicit recognition of the need to reform existing procedures and a proposal for action in this regard. Amnesty International understands that there are no concrete proposals for reform, and that Paraguay has not initiated any discussions with Indigenous communities about establishing such a mechanism.

Furthermore, given the historical roots of discrimination in Paraguay, the drawing of an explicit link to Paraguay’s human rights obligations regarding Indigenous land claims would have been a useful action towards promoting greater understanding and mitigating discriminatory attitudes. Amnesty International welcomes consolidated action under Proposal, and urges the Paraguayan government to introduce measures that allow it to account publicly for progress made towards reaching its own targets at six-monthly intervals.

**Recommendations:**

- Begin a nationwide land reform process with the free, prior and informed consent of Indigenous Peoples, with a view to developing an effective mechanism to process land claims. This should be informed by international standards and include the review of existing land titles where disagreements have arisen;
- Provide six-monthly updates regarding progress in addressing unresolved land claims towards targets established in the Public Policy Proposal.

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169, and once a consensus has been attained regarding the bill, it will be processed before the Legislative [...]”

<sup>50</sup> Social Cabinet [Gabinete Social], “Paraguay for All: Public Policy Proposal for Social Development, 2010-2020” [“Paraguay para Todos y Todas: Propuesta de Política Pública para el Desarrollo Social, 2010-2020”], p.120.

<sup>51</sup> *Ibid.* p.82.

<sup>52</sup> Human Rights Council, Working Group on the Universal Periodic Review, Tenth Session, “National report submitted in accordance with paragraph 15 (a) of the annex to Human Rights Council resolution 5/1”, para 69.

### 3. INFORMED CONSENT FOR DECISIONS DIRECTLY RELATING TO INDIGENOUS PEOPLES' RIGHTS AND INTERESTS (GENERAL RECOMMENDATION 23, PARAGRAPH (4) (D))

Lack of consultation with Indigenous Peoples on reforms that will affect them has marginalised leaders and communities, and generated mistrust of State institutions. There is no legislation in Paraguay incorporating standards on free, prior and informed consent into domestic law, a measure that Amnesty International believes needs to be taken to bring the State into line with the Committee's guidance under General Recommendation 23, paragraph (4) (d), and the standards established in the UNDRIP (Art. 19).

A recent resolution regarding consultation passed by the INDI and directed at all government bodies, regarding consultation<sup>53</sup> does seek to address this crucial issue, but the resolution is inconsistent with international standards (particularly UNDRIP) and is inadequate in scope. Importantly, the resolution fails to set out the obligation to obtain free, prior and informed consent through consultation with Indigenous Peoples' own representative organizations.<sup>54</sup> Furthermore, the responsibility to implement a resolution passed by an institution without ministerial rank could come into doubt among other officials and authorities, which in turn could lead to concerns around coherence and consistency in its application.

The INDI is not seen as a representative authority for Paraguayan Indigenous communities by those communities. Thus the requirement in the resolution that the INDI "intervene in all consultations with Indigenous communities, playing a lead role in scrutinising [fiscalización] and evaluating consultation processes" is problematic. Amnesty International believes that any role played by the INDI with regard to implementing standards on free, prior and informed consent should be in the spirit of facilitation and advising on international standards, as well as promoting inclusive decision-making.

While this resolution may lead to some immediate improvements on the status quo, encouraging in this way some new good practice, it is essentially an inadequate response to the problem of lack of consultation on administrative or legislative measures that may affect Indigenous Peoples. For this reason, Amnesty International **has urged the Social Cabinet, which coordinates actions on social issues taken by different ministries, in conjunction with the INDI and Indigenous groups, to promote a wider discussion regarding free, prior and informed consent with Indigenous groups, with a view to developing a legislative proposal**

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<sup>53</sup> INDI, "Resolution to establish the obligation to request the intervention of the INDI for all consultation processes in indigenous communities", ["Resolución por la cual se establece la obligación de solicitar la intervención del INDI para todos los procesos de consulta en las comunidades indígenas"], No.2039/10, 11 August 2010.

<sup>54</sup> As required by Article 19 of UNDRIP "States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them."

that will effectively and consistently incorporate procedures for consent and consultation into the national legal framework. These procedures should be applicable in different thematic areas that affect Indigenous Peoples (health, education, land, for example) and should include an alternative dispute resolution process for situations in which conflict arises over free, prior and informed consent, and an independent monitoring body.

As a starting point for these discussions, Amnesty International has urged the Paraguayan government to publicise, disseminate widely and implement the “consultation protocol” it referred to in its report to the UPR<sup>55</sup> in order to gather input from Indigenous Peoples, their organizations, others advocating for their rights, and experts on Indigenous Peoples rights.

**Recommendations:**

- Ensure that Indigenous Peoples and the government engage in discussions about law reform that will permit the incorporation of consultation and free, prior and informed consent processes into laws and policies;
- The review and development of policies and laws on consultation and free, prior and informed consent processes must provide an opportunity to scrutinise and reform existing institutional arrangements for Indigenous Peoples issues;
- Disseminate “consultation protocol” and set out a timeframe and procedures for the development of a legislative proposal on incorporating obligations regarding consent and consultation into national law, in collaboration with Indigenous Peoples and their representatives.

## **4. HUMAN RIGHTS DEFENDERS (ARTICLE 5, AS INTERPRETED BY GENERAL RECOMMENDATION 23, PARAGRAPH 4(E))**

In December 2010, authorities raided the offices of the non-governmental organization Iniciativa Amotocodie. Weeks prior to the raid, the organization had launched a national and international campaign to stop a scientific expedition from entering an area where un-contacted Indigenous groups are believed to live. Despite the co-sponsoring of the expedition by the Paraguayan government, no formal consultation of Indigenous groups, their representatives or those who may have been able to inform on the best way to mitigate the risk to un-contacted groups had been conducted. The warrant for the raid and the way in which it was carried out - including the confiscation of documents not related to the charges - broke procedural guarantees and appeared to be in reprisal for the organization’s work expressing concern around the expedition.

The crucial role played by Indigenous Peoples Organizations (IPOs), and non-governmental

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<sup>55</sup> Human Rights Council, Working Group on the Universal Periodic Review, Tenth Session, “National report submitted in accordance with paragraph 15 (a) of the annex to Human Rights Council resolution 5/1”, paragraph 67. A/HRC/WG.6/10/PRY/1

organizations advocating for Indigenous Peoples' rights, should be recognised by the Paraguayan government. The Paraguayan government has the responsibility to protect, promote and uphold the right to defend human rights, a responsibility that requires it to take active steps to ensure the protection of human rights defenders.

In October 2010, in a significant step, existing IPOs set up a new Coordinating Body (the "Mesa de Coordinacion de Organizaciones Indigenas en Paraguay, MCOI-Py). Their agenda is to advocate for the return of traditional lands to the Indigenous Peoples who live across Paraguay.

**Recommendations:**

- Design a training programme to educate public officials on the role of human rights defenders, and their individual responsibilities in upholding rights to equality and non-discrimination, to ensure obligations under the Convention are implemented;
- Enter into constructive dialogue with IPOs in order to address their rights-based concerns, and for guidance in designing and implementing policies that affect their members.

## SUMMARY OF RECOMMENDATIONS

**With respect to the lack of an effective framework for the protection of Convention rights:**

- Provide an annual update on progress in implementing recommendations of the Truth and Justice Commission, especially with regards measures taken towards combating discrimination;
- Seek technical assistance from relevant human rights bodies and experts (including the UN Special Rapporteur on Indigenous Peoples, the ILO, the Office of the High Commissioner for Human Rights and the Inter-American Commission on Human Rights) to design and implement a comprehensive review of the existing institutional framework implementing policies directed at Indigenous Peoples. Such a review should produce a proposal for reform of these same institutions. For this purpose, the Paraguayan government should issue a direct invitation to the UN Special Rapporteur on Indigenous Peoples, to underscore its express interest in a visit from this particular mandate, in line with the standing invitation to Special Procedures;
- Ensure that the INDI and other government institutions assist in ensuring Indigenous Peoples can access their rights by informing government of its obligations under international law;
- Provide information regarding concrete actions to be taken to respond to the recommendations accepted by Paraguay during the UPR process regarding the human rights of Indigenous Peoples. In particular those recommendations calling on Paraguay to comply fully with judgements by the Inter-American Court of Human Rights on the violation of the rights of the Yakye Axa, Sawhoyamaxa and Xakmok Kasek Indigenous communities;
- Ensure sufficient resources to the Indigenous Peoples Census, establishing a 10-year cycle for its work;
- Expedite discussion and passage of the anti-discrimination law, with a view to its approval during the next session of Parliament;
- Ensure all public officials involved in Indigenous issues are trained in obligations under



international instruments such as the Convention, stressing the importance of implementing these obligations in their work;

- Make a declaration under Art. 14 of the Convention;
- Respond without further delay to the concerns raised in August 2010 under the Committee's Early Warning Procedure;
- Evaluate the work to date of the CICSI with a view to addressing problems in its response to cases regarding Indigenous Peoples rights.

**With respect to property, land, housing and culture:**

- Take in good faith all necessary administrative and legislative measures to resolve the situation of the Yakye Axa and Sawhoyamaya communities, by returning without further delay ancestral land to them, and other communities with outstanding land claims;
- Ensure that bodies and processes designed to assist with implementing international obligations are capable of fulfilling this mandate.
- Ensure that human rights obligations, including rights under the Convention, are adhered to when facilitating the expansion of agro-industry;
- Ensure that no titles, licenses or other rights are granted over land claimed by Indigenous communities before these claims are adequately addressed;
- Ensure competing claims over land are adequately addressed with due regard to Indigenous communities' right to traditional lands;
- Protect Indigenous communities from being subjected to forced evictions, by either government agents or non-state actors, and ensure respect for the rights of all victims of forced evictions to an effective remedy and reparations, including restitution, rehabilitation, compensation, satisfaction and guarantees of non-repetition;
- Ensure non-state actors do not obstruct Indigenous Peoples' access to food, water and basic services. Undertake a review of resources for providing law enforcement in Indigenous areas with a view to ensuring that these resources are available to these communities in a timely fashion if needed. Investigate past failures of law enforcement authorities to respond to security threats and initiate disciplinary proceeding where appropriate;
- ensure that any abuses of the human rights of Indigenous Peoples by non-state actors are investigated by government authorities in good faith, and non-state actors found to be responsible are held accountable, including where appropriate by prosecution in line with internationally recognised fair trial standards;
- Implement in full the precautionary measures issued on behalf of the Kelyenmagategma community;
- Begin a nationwide land reform process with the free, prior and informed consent of Indigenous Peoples, with a view to developing an effective mechanism to process land claims. This should be informed by international standards and include the review of existing land titles where disagreements have arisen;
- Provide six-monthly updates regarding progress in addressing unresolved land claims towards targets established in the Public Policy Proposal.

**With respect to informed consent for decisions directly relating to Indigenous Peoples' rights and interests:**

- Ensure that Indigenous Peoples and the government engage in discussions about law reform that will permit the incorporation of consultation and free, prior and informed consent processes into laws and policies;
- The review and development of policies and laws on consultation and free, prior and

informed consent processes must provide an opportunity to scrutinise and reform existing institutional arrangements for Indigenous Peoples issues;

- Disseminate “consultation protocol” and set out a timeframe and procedures for the development of a legislative proposal on incorporating obligations regarding consent and consultation into national law, in collaboration with Indigenous Peoples and their representatives.

**With respect to human rights defenders:**

- Design a training programme to educate public officials on the role of human rights defenders, and their individual responsibilities in upholding rights to equality and non-discrimination, to ensure obligations under the Convention are implemented;
- Enter into constructive dialogue with IPOs in order to address their rights-based concerns, and for guidance in designing and implementing policies that affect their members.

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