

# PARAGUAY

SUBMISSION TO THE  
UNITED NATIONS HUMAN  
RIGHTS COMMITTEE

FOR THE 107TH SESSION OF THE HUMAN  
RIGHTS COMMITTEE (11-28 MARCH  
2013)

**AMNESTY**  
INTERNATIONAL



Amnesty International Publications

First published in 2013 by  
Amnesty International Publications  
International Secretariat  
Peter Benenson House  
1 Easton Street  
London WC1X 0DW  
United Kingdom  
[www.amnesty.org](http://www.amnesty.org)

© Amnesty International Publications 2013

Index: AMR 45/001/2013  
Original Language: English  
Printed by Amnesty International, International Secretariat, United Kingdom

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## INTRODUCTION

Amnesty International submits this briefing to the Human Rights Committee ahead of its examination in March 2013 of Paraguay's third periodic report on the implementation of the International Covenant on Civil and Political Rights (the Covenant or ICCPR).

The document highlights a number of ongoing human rights concerns in Paraguay in relation to several questions on the Committee's list of issues to be taken up in connection with its review of the state report, and updates the information provided to the Committee ahead of the pre-session meeting on Paraguay in March 2012.<sup>1</sup> In particular:

- Amnesty International remains concerned about the lack of adequate legislation to prevent and punish all forms of discrimination in Paraguay (Question 3 in the list of issues).
- The organization is also concerned at the absence of effective measures to address the historical and systematic discrimination suffered by Indigenous Peoples in Paraguay and violations to their right to traditional land (Question 4). Despite positive commitments of the authorities in recent years and certain progress in securing ancestral land for a number of communities, coherent and comprehensive mechanisms to ensure land rights for Indigenous Peoples as well as policies to reverse structural marginalization and abuses of Indigenous Peoples remain a pending task.
- The organization is concerned that abortion remains criminalized for women and girls who become pregnant as a result of a rape, and that women's access to safe and legal abortions is inadequate (Question 10).
- Finally, Amnesty International is concerned about the failure of Paraguay to comply with its obligations (including under Articles 6 and 7 of the Covenant) with respect to the killing of 17 people – 11 peasants and six policemen – in the context of an eviction in the north-east of Paraguay in June 2012. The organization considers that the case is emblematic of the ongoing failure of the state to ensure independent and impartial investigations into allegations of human rights abuses committed by the police, including extrajudicial executions and other unlawful killings as well as torture and other ill-treatment (in part related to Questions 14 and 15).

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<sup>1</sup> See List of issues to be taken up in connection with the consideration of the third periodic report of Paraguay, UN Doc. CCPR/C/PRY/3, 27 April 2012, [http://www2.ohchr.org/english/bodies/hrc/docs/AdvanceVersions/CCPR-C-PRY-Q-3\\_en.pdf](http://www2.ohchr.org/english/bodies/hrc/docs/AdvanceVersions/CCPR-C-PRY-Q-3_en.pdf). Paraguay's state report to the Human Rights Committee is available at: [http://www2.ohchr.org/english/bodies/hrc/docs/CCPR.C.PRY.3\\_en.doc](http://www2.ohchr.org/english/bodies/hrc/docs/CCPR.C.PRY.3_en.doc).

## **NON-DISCRIMINATION AND RIGHTS OF INDIGENOUS PEOPLES (ARTICLES 2, 26 AND 27 ICCPR)**

### **Anti-discrimination bill (*Question 3 in the List of Issues*)**

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

A draft anti-discrimination law was tabled in the Senate in May 2007.<sup>2</sup> The draft law was prepared in coordination and with the input of a number of civil society organizations. In June 2008 the Commission on Equity, Gender and Social Development of the Paraguayan Senate advised for the draft to be discussed and passed by the plenary of the Senate. However, after almost 5 years since that recommendation, no further steps have been taken to speed up the approval of this draft.

Amnesty International considers that the draft law submitted in 2007 is in line with international standards on equality and non-discrimination and is concerned at the delays in the discussions which suggest the lack of attention given to this issue by the legislative. At the time of writing concerns remained at the fact that some parliamentarians continue to seek the exclusion of the reference to sexual orientation as a prohibited ground for discrimination. This is allegedly the reason why the formal discussion of the draft law is experiencing delays.

### **Discrimination against Indigenous people and violations of their right to traditional land (*Question 4 in the List of Issues*)**

The absence of specific legislation to overturn discriminatory practices is affecting considerably Indigenous Peoples in Paraguay, who have historically been marginalized and subjected to grave and systematic abuses. Official figures suggest that there are around 108,600 Indigenous people in Paraguay – around 1.7 per cent of the population though this is likely to be a significant underestimate of the true figure. There are 17 different Indigenous groups, with five linguistic sub-groups.<sup>3</sup>

Indigenous Peoples suffer high levels of illiteracy and difficulties in accessing health care

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<sup>2</sup> Draft law 74805, see [http://www.senado.gov.py/silpy/main.php?pagina=info\\_proyectos&paginaResultado=info\\_tramitacion&idProyecto=1163](http://www.senado.gov.py/silpy/main.php?pagina=info_proyectos&paginaResultado=info_tramitacion&idProyecto=1163).

<sup>3</sup> For details on Amnesty International's concerns with regards to discrimination against Indigenous Peoples in Paraguay see *Paraguay: Briefing to the UN Committee on the Elimination of Racial Discrimination*, AMR 41/001/2011, 8 July 2011, <http://www.amnesty.org/en/library/info/AMR45/001/2011>.

and basic services such as water and electricity.<sup>4</sup> Available information suggests that Indigenous Peoples also suffer from disproportionately high levels of infant and maternal mortality, yet the absence of systematic, official studies into their health situation makes it impossible to monitor such problems systematically, and therefore practically impossible to address them effectively through public policy.<sup>5</sup>

National and international organizations have consistently raised concern about the low levels of welfare and difficult socio-economic circumstances of Indigenous Peoples in Paraguay that contribute to their discrimination and systematic exclusion. In 2010 the United Nations Permanent Forum on Indigenous Peoples (UNFPPI) drew attention to the lack of access to health and education services by Indigenous groups in the Chaco area.<sup>6</sup> Paraguay's United Nations Development Assistance Framework (UNDAF) 2007-2011, which defined the overall strategy and actions for the UN presence in Paraguay aimed at achieving national development priorities as agreed with the government, recognized that there was a general "absence of policies directed at Indigenous Peoples".<sup>7</sup> This absence of policies has not fundamentally changed since the adoption of the framework.

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

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<sup>4</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 de la Encuesta de Hogares Indígenas, Características Demográficas, Sociales y Económicas*], 2008.

<sup>5</sup> In August 2012 the UN Committee for the Elimination of the Racial Discrimination (CERD) expressed concerns at the lack of statistics and reliable disaggregated data about the demographic composition of the population, particularly in the case of Indigenous Peoples and Afro descents communities in Paraguay, which makes the planning and implementation of policies and programmes aimed at addressing discrimination more difficult. See Concluding observations on Paraguay, UN Doc. CERD/C/PRY/CO/1-3, 12 September 2011 para. 8, [http://www.un.org/ga/search/view\\_doc.asp?symbol=CERD%20C/PRY/CO/1-3](http://www.un.org/ga/search/view_doc.asp?symbol=CERD%20C/PRY/CO/1-3).

<sup>6</sup> UNFPPI, Summary and recommendations of the report of the mission to Paraguay, Recommendations, 18 January 2010, UN Doc. E/C.19/2010/5, [http://www.un.org/ga/search/view\\_doc.asp?symbol=E/C.19/2010/5](http://www.un.org/ga/search/view_doc.asp?symbol=E/C.19/2010/5). For further concerns and recommendations on the situation and systematic abuses suffered by Indigenous Peoples in Paraguay see also the Report by the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, James Anaya, 15 September 2010, UN Doc. A/HRC/15/37/Add.1, [http://www.un.org/ga/search/view\\_doc.asp?symbol=A/HRC/15/37/Add.1](http://www.un.org/ga/search/view_doc.asp?symbol=A/HRC/15/37/Add.1), pp. 131-146 ; as well as the Concluding observations of the Committee on Economic, Social and Cultural Rights (CESCR) on Paraguay, UN Doc. E/C.12/PRY/CO/3, 4 January 2008, [http://www.un.org/ga/search/view\\_doc.asp?symbol=E/C.12/PRY/CO/3](http://www.un.org/ga/search/view_doc.asp?symbol=E/C.12/PRY/CO/3).

<sup>7</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], p. 14.

comunidades indígenas”],<sup>8</sup> passed in 1981, and subsequently amended in 1996.<sup>9</sup> However, this law does not contain any specific provisions aimed at overcoming discrimination. Moreover, the recognition of Indigenous Peoples as such in the 1992 Constitution<sup>10</sup> has not yet been translated into comprehensive policies to protect their rights and address the structural discrimination members of Indigenous communities face.

In 2008 the Truth and Justice Commission in Paraguay – which investigated abuses committed during the military regime of General Stroessner (1954-1989) and the transition to democracy up to 2003 – concluded, among others, that the state’s tolerance of practices of racial discrimination by the non-Indigenous population in Paraguay, has also produced violations of the right to life and integrity of Indigenous Peoples by different groups.<sup>11</sup> In 2011 the UN Committee on the Elimination of Racial Discrimination (CERD) expressed concerns about the lack of measures to comply with the recommendations of the Truth and Justice Commission to address racial discrimination against Indigenous people in Paraguay. The Committee also raised concern about the absence of a comprehensive policy and insufficient institutional capacity to guarantee the rights of Indigenous Peoples, highlighting in particular the vulnerable situation of Indigenous women, suffering from multiple and intersectional forms of discrimination.<sup>12</sup>

#### Violation of the right to culture and enjoyment of land and resources

The right to traditional lands is crucial to Indigenous Peoples in Paraguay, as elsewhere. It is a vital element of their sense of identity, livelihood and way of life. In its General Comment on Article 27 of the ICCPR the Human Rights Committee recognized that the right of members of Indigenous Peoples to the enjoyment of their culture is often closely associated with the use of land and its resources.<sup>13</sup>

Paraguay has ratified ILO Convention 169 on Indigenous and Tribal Peoples and endorsed the UN Declaration on the Rights of Indigenous Peoples, which require recognition of

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<sup>8</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>9</sup> Law N° 919/96.

<sup>10</sup> Constitution, Article 62.

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

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

<sup>13</sup> General Comment No. 23 ,paragraph 3.2 and 7.

Indigenous Peoples' rights to ancestral lands. In addition, the 1992 Constitution establishes Indigenous Peoples' right to hold communal property, and the state's responsibility to provide such lands free of charge.<sup>14</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>15</sup> Moreover, the ILO Committee of Experts noted that "in the region of Chaco where the Indigenous population represented 60 per cent of the population, land that officially belonged to the Indigenous Peoples constituted 1.8 per cent."<sup>16</sup>

The state's failure to accord Indigenous Peoples' legal recognition and protection to these lands, including the rights to use and control these lands and resources, means that Indigenous Peoples often do not have access to their ancestral lands. This prevents them from sustaining their traditional activities such as hunting or fishing, or their cultural and spiritual practices, in contravention of Article 27 of the ICCPR.

In recent years, several Paraguayan authorities have made specific commitments to address the longstanding barriers encountered by Indigenous Peoples to have access to their land. The inauguration as President of former Bishop Fernando Lugo in August 2008 raised expectations of Paraguay's Indigenous Peoples, not least because of his expressed commitment to protect their right to their traditional lands.<sup>17</sup> Also, in 2011, Paraguay supported a number of recommendations under the Universal Periodic Review (UPR) process, which called for concrete measures to strengthen the rights of Indigenous Peoples to their ancestral lands.<sup>18</sup> In August 2012, in its written responses to the Committee's list of issues, the authorities repeated their commitment to address the persistent violations of the rights of Indigenous Peoples, making land rights a "priority issue".<sup>19</sup>

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<sup>14</sup> Constitution, Art.64

<sup>15</sup> DGEEC], *II National Indigenous Census of Population and Housing, 2002, [II Censo Nacional Indígena de Población y Vivienda, 2002]*, p.19.

<sup>16</sup> See, International Labour Conference: Observations and information concerning particular countries, 91<sup>st</sup> session, 2003, provisional record. Amnesty International is not aware of further detailed updated figures for the Chaco region but the absence of appropriate measures and plans to effectively deal with Indigenous' land titling suggests that there have been no major improvements since then.

<sup>17</sup> See <http://www.ultimahora.com/notas/145853-Discurso-del-Presidente-de-la-Republica-Fernando-Lugo-Mendez>.

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

<sup>19</sup> Responses by the Paraguayan government to the list of issues to be taken up in connection with the consideration of the third periodic report of Paraguay [*Respuestas del Gobierno de Paraguay a la lista de cuestiones que deben abordarse al examinar el tercer informe periódico de Paraguay*], CCPR/C/PRY/Q/3/Add.1, August 2012, page 5, available at:

While welcoming recent commitments, Amnesty International believes that actions taken by the authorities to ensure that Indigenous Peoples can enjoy their right to traditional land remain insufficient. Only recently, positive steps have been taken to secure the ancestral land of a number of Indigenous communities. However, domestic legal and administrative measures for addressing Indigenous land claims in Paraguay remain inadequate and a high number of Indigenous Peoples in the country do not have full rights to their ancestral land. Procedures from filing a land claim by an Indigenous community to the eventual return of the land remain overly-bureaucratic, difficult to access and in many cases have been demonstrated unfit for this purpose. This conclusion has been reached consistently by international human rights bodies scrutinizing Paraguay's record on Indigenous Peoples' rights.<sup>20</sup>

The Inter-American Court of Human Rights has stressed the need for a national land claims mechanism in order to address this fundamental issue, and for this mechanism to be established with the full participation of Indigenous Peoples. The Inter-American Court has ordered Paraguay to adopt in its domestic system, "... the legislative, administrative, and any other kind of measures that may be necessary to create an effective mechanism for indigenous peoples to claim ancestral or indigenous land, a mechanism that allows for the fulfillment of their right to property."<sup>21</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>22</sup> To date, this has not happened.

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[http://www2.ohchr.org/english/bodies/hrc/docs/AdvanceVersions/CCPR-C-PRY-Q-3-Add1\\_sp.doc](http://www2.ohchr.org/english/bodies/hrc/docs/AdvanceVersions/CCPR-C-PRY-Q-3-Add1_sp.doc).

<sup>20</sup> CESCR Concluding observations on Paraguay, E/C.12/PRY/CO/3, 4 January 2008, para. 23 (b); UNPFII Report on the mission to Paraguay, E/C.19/2010/5, 18 January 2010, Recommendations (section D); ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR): Individual Observation concerning Indigenous and Tribal Peoples Convention, 1989 (No. 169) 2010, p.3; CERD Concluding observations on Paraguay, CERD/C/PRY/CO/1-3, para 15, 1 September 2011.

<sup>21</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 *Sawhoyamaya*, 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>22</sup> UNPFII Report on the mission to Paraguay, 18 January 2010, E/C.19/2010/5, para 17, para 26. In February 2010, the UK, Germany, Korea and Spain called in the context of the UPR on Paraguay to establish an effective land claims mechanism before the UPR, see Report of the UPR Working Group, A/HRC/17/18, 28 March 2011.

Concerns remain at the role of the National Indigenous Institute (INDI) to address Indigenous Peoples' rights, including land rights.<sup>23</sup> For many years the INDI has not been seen as a representative authority for Paraguayan Indigenous communities. The Institute does not have institutional autonomy, nor does it have functional authority over other government departments or ministries in the government hierarchy. Moreover, according to information received by Amnesty International, for many years the budget allocated to the INDI has not been sufficient to cover for many of the requests of land acquisition to be later on transferred to the Indigenous communities affected. Amnesty International is also concerned that it is not currently required by INDI's mandate that it agrees the policies it designs or implements with the Indigenous Peoples on whose behalf it works.

Amnesty International welcomes the progress made by the INDI to secure a solution for a number of Indigenous land claims, particularly during the first months of 2012.<sup>24</sup> However, improvements in certain cases are very much dependent on who is running the institution rather than the existence of coherent policies and a clear mandate to address these claims. In fact, recent actions taken by the INDI under its new president, who got appointed after the impeachment of former Paraguayan President Fernando Lugo in June 2012, have been widely questioned by Indigenous groups and local NGOs.

In particular, since November 2012 concerns have been raised about the decision of the INDI to sell and transfer to a private owner around 25,000 hectares of the ancestral land of the Ayoreo Indigenous group in Mariscal Estigarribia district, in the Chaco region.<sup>25</sup> The land had been acquired by the INDI in 1996. Around 20 families of the Cuyabía Indigenous community have been settled in a portion of the land since 2010 and it is believed that other Ayoreo Indigenous groups in voluntary isolation have also been living in the land for many years.

Indigenous groups and local NGOs have complained about the transfer of the land to a private owner because, as part of the programme to regulate Indigenous land (*Proyecto de Regulación de Tierras Indígenas*), the INDI can only acquire the land with the purpose of transferring it free of charge to the Indigenous communities. They argue that the recent transfer made by the INDI also fails to comply with the Paraguayan Constitution, which prohibits the sale or transfer of Indigenous lands for commercial or other purposes.<sup>26</sup>

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<sup>23</sup> Law 904/81 set up the country's national Indigenous Institute [*Instituto Paraguayo del Indígena, INDI*]. In 1996 the Institute passed from the purview of the Ministry of Defence to the Ministry for Education and Culture (Art. 30 Ley 919/96).

<sup>24</sup> In January 2012, the authorities, a landowner and the Yakye Axa community reached an agreement by which the INDI was requested to buy alternatives lands – accepted by the community – to transfer to the community (see more on page 15).

<sup>25</sup> Resolution INDI n° 1501/12.

<sup>26</sup> 1992 Paraguayan Constitution, Article 64 “Indigenous Peoples have the right to communal land property, with enough extension and quality for the preservation and development of their ways of life. The State has to provide them with these lands free of charge. The lands cannot be divided, transferred, limited or subjected to contractual obligations and cannot be rented out. The lands will also be free from taxes.” (unofficial translation) “Los pueblos indígenas tienen derecho a la propiedad comunitaria de la

According to reports, the Cuyabía Indigenous community was awaiting for the definite title over the land and was not consulted or even informed about the INDI's intentions to transfer the land to a private person. In December 2012, the Association of Native Ayoreos from Paraguay (*Unión de Nativos Ayoreos de Paraguay, UNAP*) filed a complaint before the Public Ministry against the President of the INDI for his responsibility in the sale of the land. At the time of writing, a solution to this case was still pending.

On some occasions, unresolved Indigenous land claims have led to violence in the country. Amnesty International is also concerned that members of Indigenous groups have been exposed to threats, evictions and violence as a result of unclarity over land titles. In August 2012, the police tried to evict several families of an Ava Guaraní community, in the Itakiry district, eastern Paraguay. According to reports by community members, during the operation the police burned down a number of huts. Community members argue that the INDI acquired the land on their behalf some years ago. However, a commercial company that uses the land to grow soya is claiming ownership of the land.<sup>27</sup> Amnesty International is not aware of any independent investigation to bring those responsible for the attacks against the Indigenous communities to justice.

#### Lack of compliance with international judgments over Indigenous Peoples' land claims

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

In 2005 and 2006, in two different judgments, the Inter-American Court of Human Rights ordered Paraguay to return the ancestral land to the Enxet Indigenous communities of Yakye Axa and Sawhoyamaxa. For over 20 years, the two communities have been forced to live in temporary homes on a narrow strip of infertile, inhospitable land by the side of the Pozo Colorado-Concepción highway because private landowners moved in and took over their lands. The communities are dependent upon irregular food and water supplies and concerns remain about adequate healthcare and education.<sup>28</sup> Away from their ancestral lands, the Indigenous communities are unable to sustain their traditional activities, essential for their survival.

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tierra, en extensión y calidad suficientes para la conservación y el desarrollo de sus formas peculiares de vida. El Estado les proveerá gratuitamente de estas tierras, las cuales serán inembargables, indivisibles, intransferibles, imprescriptibles, no susceptibles de garantizar obligaciones contractuales ni de ser arrendadas; asimismo, estarán exentas de tributo”

<sup>27</sup> In 2009 five Avá Guaraní Indigenous communities in Itakiry district were also threatened with an eviction order by soya farmers challenging the ownership of the land. See Amnesty International Urgent Action, *Paraguay: Indigenous communities facing eviction*, AMR 45/048/2009, 5 November 2009, <http://amnesty.org/en/library/info/AMR45/048/2009/en>.

<sup>28</sup> Amnesty International, “*We’re only asking for what is ours*”, *Indigenous Peoples in Paraguay - Yakye Axa and Sawhoyamaxa*, AMR 45/005/2009), March 2009, <http://amnesty.org/en/library/info/AMR45/005/2009/en>.

In its judgments, the Court found that the rights to fair trial and judicial protection, the right to property and right to life of members of the two communities had been violated. The three-year deadline established by the Court for the state to formally and physically convey to the Indigenous communities their traditional lands passed for the Yakye Axa on 13 July 2008 and for the Sawhoyamaya on 19 May 2009.<sup>29</sup> At the time of writing, the communities' rights had still not been fully upheld and they were still living alongside the main highway (for further updates concerning the cases of the Yakye Axa and Sawhoyamaya see page 15 below).

On another similar case, in August 2010 the Inter-American Court of Human Rights also ruled in favour of members of the Xákmok Kásek Indigenous community.<sup>30</sup> According to official statistics from 2008, the Xákmok Kásek consists of some 60 families. It has a claim over 10,700 hectares of land situated within the confines of a private ranch in the Paraguayan Chaco. The Court established a three year deadline for Paraguay to return the ancestral land to the Xákmok Kásek (September 2013). At the time of writing the authorities had been engaged in talks with the community. However, community members complain that no concrete measures have been implemented yet to solve their claims in line with the judgment. One of the main obstacles is the lack of effective actions by the authorities to revoke a decree that establishes that the land is a protected wildlife zone preventing any possible sale of the land.

Lack of full compliance with the Inter-American Court orders is having serious negative impact on the three communities' livelihoods, and perpetuates the degradation of their cultural identity and heritage. Until the rights of these communities to their traditional lands are upheld in line with the judgments of the Inter-American Court, they continue to be denied their right to enjoyment of their culture in accordance with international standards, including Article 27 of the Covenant.

An Inter-Institutional Commission for the Compliance with the International Judgments (*Comisión Interinstitucional para el Cumplimiento de las Sentencias Internacionales*, CICSI) coordinates the state compliance with international judgments, including the three judgments related to Indigenous land claims.<sup>31</sup>

In its written responses to the Committee's list of issues for Paraguay, the authorities argue that the CICSI has achieved important results towards the compliance of the judgments.<sup>32</sup>

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

<sup>30</sup> Case Xákmok Kásek Indigenous Community Vs. Paraguay, judgment of 24 August 2010, [http://www.corteidh.or.cr/docs/casos/articulos/seriec\\_214\\_esp.pdf](http://www.corteidh.or.cr/docs/casos/articulos/seriec_214_esp.pdf). See Amnesty International Public Statement: *Paraguay condemned for the third time by the Inter-American Court of Human Rights for violating the rights of indigenous peoples*, 29 September 2010. <http://www.amnesty.org/en/library/info/AMR45/006/2010/en>.

<sup>31</sup> The Commission was created in February 2009 and is formed by different governmental bodies including the General Prosecutor's office.

<sup>32</sup> Responses by the Paraguayan government to the list of issues, CCPR/C/PRY/Q/3/Add.1, page 6. August

Contrary to this view, Amnesty International considers that the CICSI has not proved very effective in securing the traditional lands to the Indigenous communities affected. Indigenous communities have expressed concerns that for many years the Commission has prioritized pursuing alternative land proposals without having first exhausted with due diligence other options such as conducting serious negotiations with the current owners of the lands traditionally inhabited by the Indigenous communities.

The authorities argue that the CICSI has played a key role in securing a friendly agreement (*Acuerdo de Solución Amistosa*)<sup>33</sup> before the Inter-American Commission of Human Rights in the case of the Kelyenmagatema, another Indigenous community whose claim was admitted by the Inter-American Commission in 2007.<sup>34</sup>

For many years the Kelyenmagatema community lived on a very small settlement – less than three hectares – in Puerto Colon, Concepcion. The community claimed that their traditional habitat comprises this small settlement as well an area of 15,000 hectares owned by a private company.

In July 2011 the State acquired 8,478 hectares in an area nearby the land claimed and offered it to the community. After many years of harassment by members of the company<sup>35</sup> and the lack of progress in the negotiations to secure their traditional land, the 52 families of the community accepted the alternative proposal and moved to the new settlement.

As part of the agreement, the State made several commitments to improve the social-economic conditions of the Kelyenmagatema including the set up of a community development fund. The community is concerned that most of the commitments have not yet been fulfilled, including the requirement of adequate provision of food, adequate housing and health services for the community members. The deadline for the State to comply with its commitments expired on 7 December 2012.

In December 2012, the Vice President of the Government was appointed President of the CICSJ and the Minister of Justice and Labour assumed the coordination of the plans and programmes of the institutions and governmental bodies that are part of the CICSJ, replacing the General Prosecutor.<sup>36</sup> This reform has been perceived as a positive move towards the strengthening of the mechanism, since it potentially provides more political power to ensure compliance with international decisions. It is vital that plans and actions adopted by the CICSJ from now on are carried out with the full participation of the communities affected and with free, prior and informed consultation in line with international human rights obligations on this matter.

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2012.

<sup>33</sup> The agreement was signed on 7 December 2011, see: [http://www.indi.gov.py/noticia.php?noti\\_id=77](http://www.indi.gov.py/noticia.php?noti_id=77).

<sup>34</sup> Inter-American Commission of Human Rights, Admissibility report 55/07, 24 July 2007.

<sup>35</sup> Amnesty International Urgent Action, *Paraguay: Indigenous leaders received death threats*, AMR 45/005/2010, 10 September 2010, <http://amnesty.org/en/library/info/AMR45/005/2010>.

<sup>36</sup> Presidential Decree 10.449, 28 December 2012.

*Update on the situation of the Yakye Axa and the Sawhoyamaxa Indigenous communities*

In January 2012 an agreement between Paraguayan authorities and a land owner in the country's central region opened the door for the Yakye Axa to move to 12,000 hectares of land within the ancestral territory of the Enxet ethnic group in the Chaco region.<sup>37</sup> The agreement also included the state's commitment to construct a road to allow direct access to the land from a main highway. Since the construction of this road has not yet been possible, the 90 families comprising the community accepted for an alternative road to be cleared so that they are able to move to the land without further delays.

However, works to clear up the alternative road were cancelled during the first months of 2012 due to adverse weather and intense flooding in the area. The community complained that the Ministry of Public Works (*Ministerio de Obras Públicas*) – in charge of the task – did not resume the works afterwards until end of 2012. In January 2013 the Minister of Justice met with community representatives to discuss a plan for the cleaning of the alternative road.<sup>38</sup> At the time of writing Amnesty International was informed that substantial progress was made but there was no concrete date yet, by when the community could move to their new lands.

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

Similarly to the Yakye Axa, the Sawhoyamaxa Indigenous community have fought a legal battle for over 20 years to return to a portion of their ancestral land, a plot of about 14,400 hectares, in an area on the eastern side of the Chaco region.<sup>39</sup> In September 2011 an initial agreement was reached between the Paraguayan authorities, the owner of the land and Sawhoyamaxa Indigenous community leaders. This laid the groundwork for the restitution of the community's ancestral land.

However, in June 2012 negotiations stopped completely after new authorities took office as a result of the impeachment of former President Fernando Lugo. Community leaders also complained about illegal logging inside a portion of the ancestral land despite a judicial order prohibiting development (*medida de no innovar*) over the territory.<sup>40</sup> At the same time, the

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<sup>37</sup> In October 2009 the Paraguayan Senate rejected a bill for the expropriation of the ancestral lands of the Yakye Axa. Alongside negotiations with the current owners of the land, expropriation is the other legal means by which the Paraguayan State can achieve the return of the lands to the communities. Given the rejection of the bill and the difficulties of pursuing negotiations with the current owners, the Yakye Axa accepted alternative lands as second-best solution to their land claims. The land accepted is also part of the traditional territory of the Enxet ethnic group.

<sup>38</sup> See <http://www.mjt.gov.py/interna.php?id=240&sec=noticias>.

<sup>39</sup> Two companies represented by a single individual have titles over the land claimed by the Sawhoyamaxa.

<sup>40</sup> Amnesty International Urgent Action, *Indigenous land at risk*, 6 June 2012;

Paraguayan Supreme Court requested information from the government about the measures carried out to comply with the Inter-American Court judgment.

Protests by the community and hundreds of members of the 'Indigenous Leaders from Bajo Chaco Network' (*Coordinadora de Lideres Indigenas del Bajo Chaco*), including roadblocks, resulted in new attempts of the authorities to pursue an agreement with the owner of the land. At the time of writing negotiations were still ongoing but the content of the negotiations and the expected timeframe for their conclusion is unclear to the community.<sup>41</sup> The community has rejected offers of alternative lands.

Lack of mechanisms to guarantee the right to consultation and free, prior and informed consent over decisions and plans that affect Indigenous Peoples

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

Amnesty International welcomes the recent commitment of the Paraguayan authorities to adopt measures to ensure the fulfilment of the right of Indigenous Peoples to consultation with the aim to obtain their free, prior and informed consent.<sup>42</sup> However, contrary to the government opinion, the organization believes that the resolution on consultation passed by the INDI in 2010 is an inadequate response to address this crucial issue.<sup>43</sup> The resolution establishes that the INDI shall intervene in all consultation processes with Indigenous communities. Consultation processes done without the INDI inspection and evaluation are not considered valid by the institution.<sup>44</sup>

The requirement that the INDI – as an external institution which is not seen as a representative institution by many communities<sup>45</sup> – play a lead role in scrutinizing and evaluating consultation processes with Indigenous communities is problematic as it could undermine the obligation to consult to obtain their free, prior and informed consent through their own representative institutions as required by the UN Declaration on the Rights of Indigenous Peoples.<sup>46</sup> The resolution is also problematic because it establishes that the role

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<http://www.amnesty.org/en/library/info/AMR45/001/2012/en>.

<sup>41</sup> Amnesty International, *Paraguay: Indigenous community struggles to survive by the side of a road in Paraguay*, 17 December 2012, <http://www.amnesty.org/en/news/trucks-lack-water-and-little-food-indigenous-community-struggles-survive-side-road-paraguay-201>.

<sup>42</sup> See Responses by the Paraguayan Government to the list of issues, CCPR/C/PRY/Q/3/Add.1, page. 5 August 2012.

<sup>43</sup> Ibid.

<sup>44</sup> INDI, Resolution No.2039/10, 11 August 2010; [http://www.indi.gov.py/noticia.php?noticiasOrder=Sorter\\_fecha&noticiasDir=AS](http://www.indi.gov.py/noticia.php?noticiasOrder=Sorter_fecha&noticiasDir=AS).

<sup>45</sup> CERD Concluding observations on Paraguay, para 14.

<sup>46</sup> Article 19 of the UNDRIP.

of the INDI is to define the parameters of the consultation without mentioning the need to consult and agree these with the affected communities.

Amnesty International believes that the scope of this resolution needs to be reformed and calls on the authorities to initiate a wider discussion regarding the right to consultation and free, prior and informed consent with Indigenous groups with a view to developing measures to incorporate the right into the national legal framework. Furthermore, the INDI could play a significant role in facilitating and advising on international standards on free, prior and informed consent as well as promoting inclusive decision-making.

### **Amnesty International recommendations to the Paraguayan State**

- Take immediate steps to ensure the prompt adoption and implementation of an anti-discrimination law that adheres to international human rights standards and includes provisions for the prevention and punishment of discrimination based on all grounds, including sexual orientation and gender identity.
- Take concrete measures to progress in implementing recommendations of the Truth and Justice Commission, especially with regards to measures taken towards combating discrimination.
- Adopt and publish an action plan to ensure full compliance with past and future recommendations by UN treaty bodies – including the UN Committee on the Elimination of Racial Discrimination, the Committee on Economic, Social and Cultural Rights and the Human Rights Committee – as well as other human rights mechanisms, particularly with regard to Indigenous Peoples.
- Review the current role of the INDI and ensure that any reform is aimed at guaranteeing that it becomes a genuine autonomous institution that represents Indigenous Peoples in Paraguay, with sufficient funds and with the mandate to assist other government institutions in ensuring full compliance with international obligations and standards with regard to Indigenous Peoples' rights.
- Ensure that the CICSI under the new coordination of the Ministry of Justice becomes an effective mechanism to fully implement international judgments regarding Indigenous communities' claims to their ancestral lands. Ensure that plans to offer alternative lands are adequately consulted and have the free, prior and informed consent of the communities affected.
- Take all the necessary actions aiming at the restitution of the traditional lands to the Sawhoyamaxa Indigenous community as established by the 2006 Inter-American Court judgment. Ensure that negotiations with the current owners of the land are carried out with due diligence, promptly and that the community is fully informed of any potential progress made.
- Guarantee the restitution of the ancestral land to the Xámok Kásek Indigenous community by September 2013 before the three years deadline imposed on Paraguay by the Inter American Court of Human Rights in its judgment of 2010;

- Ensure that the Yaky Axa Indigenous community is able to move to their land without further delays and that a community fund is set up as the Inter-American Court of Human Rights had ordered.
- Ensure that no transfer of lands, 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.
- Take all the necessary steps to create an effective mechanism for Indigenous Peoples to claim ancestral land as ordered by the Inter American Court of Human Rights in the judgments against Paraguay.
- 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.

## **RIGHT TO LIFE (ARTICLE 6 ICCPR)**

### **Criminalization of abortion (*Question 10 in the List of Issues*)**

Abortion remains largely criminalized in Paraguay. The only circumstance in which pregnant women and girls seeking an abortion are not punished is when the fetus dies as an indirect result of a necessary medical intervention to protect the life or the health of the mother.<sup>47</sup> In any other circumstances, even if pregnancy is the result of rape, abortion is not permitted and women and girls who seek an abortion could face prison sentences – from 15 months to 10 years depending on the circumstances. Health professionals can also be penalized for the practice of illegal abortions, according to article 352 of the Criminal Code.

Lack of access to safe abortions remains one of the main causes of maternal mortality in the

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<sup>47</sup> Article 109: "Direct death as a result of the necessary delivery. Any intervention that results in the indirect death of the fetus during the delivery is not illegal if this is needed and unavoidable to protect the life or health of the mother, according to the knowledge and medical expertise" (unofficial translation) [Muerte indirecta por estado de necesidad en el parto. No obra antijurídicamente el que causara indirectamente la muerte del feto mediante actos propios del parto si ello, según los conocimientos y las experiencias del arte médico, fuera necesario e inevitable para desviar un peligro serio para la vida o la salud de la madre"]

country, which is higher than the average in the region.<sup>48</sup> According to official national data<sup>49</sup> the maternal mortality rate per 100,000 live births was 117.4 in 2008 and 125.3 in 2009. Between 2005 and 2009, abortion accounted for 24 percent of maternal deaths; obstetric complications were the first cause of maternal mortality (27 percent) during the same period.

According to the data provided by the state in its response to the Committee's list of issues, there has been a huge reduction in the number of abortions between 2010 and 2011. However, the data provided does not explain how these numbers were obtained, what cases are included under the concept of abortion, and what the main reason was that led to the decrease of recent years.<sup>50</sup>

Several treaty bodies – including the Committee on the Elimination of All Forms of Discrimination against Women, and the Committee against Torture – have expressed concerns that women and girls do not seek medical assistance after an abortion due to lack of confidentiality and respect for their right to privacy when admitted to hospitals for complications or unsafe abortions. These bodies have called on Paraguay to adopt measures to safeguard doctor-patient confidentiality and to review and modify its abortion legislation to ensure that women do not need to undertake unsafe abortions, which may put their lives at risk.<sup>51</sup>

A resolution passed by the Ministry of Health in March 2012 seeks to address the current obstacles faced by women and girls who are admitted to hospitals for complications of abortion. The resolution establishes that health centres have an obligation to admit and assist all women without discrimination and to respect their right to privacy.<sup>52</sup> Through this resolution the Ministry of Health is also approving the Manual of forms for the humane treatment of women in a post abortion situation (*Manual de Atención Humanizada de Mujeres en situación de post aborto*), which contains guidelines for health practitioners to ensure that the rights of women and girls with abortion complications are respected.

Local organizations have welcomed the resolution and recognize that in some cases it has resulted in the improvement of the treatment received by women and girls admitted in hospitals due to abortion complications. However, more efforts are needed to widely publicize the resolution to ensure that health professionals are aware of their obligations to preserve the privacy and the integrity of the patients and to ensure adequate emergency treatment to

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<sup>48</sup> CEPAL, <http://www.cepal.org/celade/noticias/paginas/6/47466/VickyCamacho.pdf>.

<sup>49</sup> Ministry of Health, *Indicadores Basicos de Salud*, 2010. See <http://www.mspbs.gov.py/v2/index.php>.

<sup>50</sup> Responses of Paraguay to the Committee's list of issues, CCPR/C/PRY/Q/3/Add.1, page 22.

<sup>51</sup> Concluding observations of the Committee on the Elimination of Discrimination against Women (CEDAW) on Paraguay, UN Doc. CEDAW/C/PRY/CO/6, 8 November 2011, para. 31, [http://www.un.org/ga/search/view\\_doc.asp?symbol=CEDAW/C/PRY/CO/6](http://www.un.org/ga/search/view_doc.asp?symbol=CEDAW/C/PRY/CO/6); Concluding observations of the Committee against Torture (CAT) on Paraguay, UN Doc. CAT/C/PRY/CO/4-6, 14 December 2011, para. 22, [http://www.un.org/ga/search/view\\_doc.asp?symbol=CAT/C/PRY/CO/4-6](http://www.un.org/ga/search/view_doc.asp?symbol=CAT/C/PRY/CO/4-6).

<sup>52</sup> Resolution No.146, 8 March 2012.

women and girls whose health and life is at risk due to unsafe abortions.<sup>53</sup>

### **Amnesty International recommendations to the Paraguayan State**

- Reform the Criminal Code to ensure that abortion is decriminalized in all circumstances, including in the context of pregnancies resulting from rape. Women and girls seeking or obtaining an abortion must not be subjected to criminal sanctions.
- Ensure medical practitioners are not subjected to criminal sanctions solely for providing safe abortions services.
- Ensure that safe and legal abortion services are accessible without restrictions to all girls and women who require them in cases of pregnancy as a result of rape, sexual assault or incest and pregnancy which poses a risk to the life or grave risk to the health of the woman.
- Promote the full implementation of the recent Ministry of Health Resolution 146 and the manual of forms for the humane treatment of women in a post abortion situation. Remove practical obstacles that stop women and girls from being treated in hospitals for all abortion complications.

## **RIGHT TO LIFE, PROHIBITION OF TORTURE AND OTHER ILL-TREATMENT, RIGHT TO LIBERTY AND SECURITY OF PERSON (ARTICLES 6, 7 AND 9 ICCPR)**

### **Lack of independent investigations into allegations of unlawful killings and other human rights violations in the context of land claims (*Additional issues not contained in the List of Issues, in part related to Questions 14 and 15*)**

In its previous concluding observations on Paraguay the Human Rights Committee expressed concern about persistent excessive use of force, including beatings and killings, by security forces and prison staff – drawing particular attention also to the disproportionate use of firearms resulting in unlawful deaths. The Committee called on the state party to ensure that allegations of excessive use of force are thoroughly investigated and the culprits prosecuted; and that victims receive fair and adequate compensation.<sup>54</sup>

Amnesty International is concerned that abuses committed by the security forces too often remain inadequately investigated. The killing of 17 people in the north-east of the country in

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<sup>53</sup> Coordinadora de Derechos Humanos de Paraguay (Codehupy). Annual Report 2012, pages 444-445.

<sup>54</sup> Human Rights Committee Concluding observations on Paraguay, CCPR/C/PRY/CO/2, 24 April 2006, para 11, [http://www.un.org/ga/search/view\\_doc.asp?symbol=CCPR/C/PRY/CO/2](http://www.un.org/ga/search/view_doc.asp?symbol=CCPR/C/PRY/CO/2). The Committee against Torture also expressed its concern about impunity for acts of torture and other ill-treatment and called on Paraguay to take steps to eradicate torture and other ill-treatment by state officials; ensure that all complaints are promptly and impartially investigated and those found guilty of torture and other ill-treatment are brought to justice. See CAT concluding observations, CAT/C/PRY/CO/4-6, 14 December 2011, para 16, [http://www.un.org/ga/search/view\\_doc.asp?symbol=CAT/C/PRY/CO/4-6](http://www.un.org/ga/search/view_doc.asp?symbol=CAT/C/PRY/CO/4-6).

June 2012, after violent clashes in connection with land disputes, is emblematic of the ongoing failure of the Paraguayan authorities to ensure independent and impartial investigations into allegations of human rights abuses committed by the police as well as the lack of an independent judiciary. The violent clashes in June 2012 also demonstrate the social unrest and conflicts which land disputes in Paraguay can reach. The events led to the impeachment of former President Fernando Lugo after being accused by the opposition of serious mismanagement of land disputes in the country.

On 15 June 2012, 17 people – 11 peasants and six policemen – died and several were injured after clashes erupted during an eviction in the Curuguaty district, in Paraguay's Canindeyú region. According to reports, during the confrontation there were more than 300 officers, many of them with firearms, as opposed to around 90 peasants who had been occupying the land for many months.<sup>55</sup> Immediately after the clashes, 13 people were detained – including two minors. The prosecutor also issued arrest warrants against approximately 50 other people.

One of the detainees in connection with the killings was Miguel Angel Correa Franco, a member of the Luz Bella community, San Pedro department. A police statement from the time of his arrest stated that he was arrested at the place of the incidents. However, Miguel Angel Correa Franco claimed he was detained by police officers as he arrived at a hospital in Curuguaty where he went to check if a friend's relative injured during the clashes was there. His lawyer requested the judge to order his release on several occasions, arguing that there was not enough evidence of his involvement in the clashes and subsequent police killings. This view was also supported by the local prosecutor who recommended the release of Miguel Angel Correa, stating that there was no evidence to charge him. Nevertheless, the lawyers' request had been rejected by both local and appeal court judges. Only on 19 July 2012 Miguel Angel Correa was released on bail after intense national and international pressure.<sup>56</sup>

In December 2012, the public prosecutor charged 14 peasants – including two minors – with several offences in connection with the violent clashes and the occupation of the land. Ten of them were also charged for the killings of the six police officers. In the case of Miguel Angel Correa Franco all charges against him were dropped confirming that he had no involvement in the clashes and that he had been subjected to arbitrary detention.

According to the investigation conducted by the prosecutor the police officers who opened

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<sup>55</sup> The lack of clarity regarding ownership of the contested land goes back to the late 1960s, when the private company Campos Morombi SAC y A claimed to have bought it from another company. However, reports indicate that the land was donated to the Paraguay Army in the 1960s although the title was not registered. Since 2004 peasant communities living in the area requested that the Paraguayan agrarian institute (*Instituto Nacional de Desarrollo Rural y de la Tierra*) transfer them those lands, which had allegedly been abandoned for years.

<sup>56</sup> See Amnesty International Urgent Actions, *Paraguay: Arbitrary detention. Miguel Angel Correa Franco*, AMR/45/003/2012, 10 July 2012, <http://amnesty.org/en/library/info/AMR45/003/2012/en>; and *Paraguay: Further information: Victim of arbitrary detention released: Miguel Angel Correa Franco*, AMR 45/004/2012, 19 July 2012, <http://www.amnesty.org/en/library/info/AMR45/004/2012/en>.

fire against the peasants acted in self defence. Subsequently, no one was charged for the killing of the 11 peasants during the shooting. However, there is no clear explanation on the prosecutor's investigations about the violent actions encountered by the police officers that allegedly left them with no option rather than shooting the peasants.<sup>57</sup>

An Amnesty International delegation visited Curuguaty in November 2012. According to eyewitnesses interviewed, some of the victims were shot dead on site after the confrontation had ended. Another person told the organization that a police officer shot one of the peasants that had a wound on his leg and killed him.<sup>58</sup> Other people said that two of the bodies were found on the contested land the day after the clashes.<sup>59</sup>

Amnesty International is concerned that other lines of investigation raised by the defence lawyers and parallel investigations from local NGOs regarding the potential responsibility of the police into the deaths of the peasants and the reported mismanagement of the crime scene were dismissed by the prosecutor without sufficient explanation.<sup>60</sup>

Amnesty International also received information from local organizations, detainees and relatives of victims about flaws in the investigation as well as information about instances of torture and other ill-treatment of peasants during police detention. Amnesty International received information from Miguel Angel Correa Franco that in custody he was beaten and faced death threats.

On 14 February 2013, the preliminary hearing for the 12 peasants facing charges in connection with the incidents in Curuguaty was suspended after the lawyers of some of them recused the competence of the judge and the public prosecutor. The two minors who also face charges appeared before another judge for minors. At the time of writing, Amnesty International was not aware of any further investigation in relation to the response of the police or their potential responsibility for the deaths of the peasants during the clashes of 15 June 2012. Similarly, no investigations have been carried out with regard to the allegations of torture and other ill-treatment of several peasants in the police station immediately after their detention.

While Amnesty International acknowledges the difficulties by the law enforcement officials to respond to acts of violence and their duty to guarantee law and order, they must do so with

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<sup>57</sup> Criminal Prosecution by the Public Prosecutor assigned to the Criminal Unit I and specialised in the fight against drug trafficking and environmental crimes, Curuguaty, December 2012. [Acusación del Agente Fiscal en lo Penal, asignado a la Unidad Penal I y especializada en la Lucha contra el Narcotráfico y Delitos Ambientales de la Fiscalía Zonal de Curuguaty, Diciembre 2012].

<sup>58</sup> Amnesty International, *Paraguay: Investigation must lead to justice for Curuguaty killings*, 17 December 2012, <http://www.amnesty.org/en/news/paraguay-investigation-curuguaty-s-deaths-flawed-2012-12-14>.

<sup>59</sup> Codehupy, Informe de Derechos Humanos sobre el Caso de Marina Cue, December 2012.

<sup>60</sup> Codehupy, Informe de Derechos Humanos sobre el Caso de Marina Cue, December 2012; Plataforma de Estudio e Investigación de Conflictos Campesino –PEICC- Informe Masacre de Curuguaty, 2012.

proportional use of force, complying at all times with their obligations to respect the rights enshrined in the Covenant (including under Articles 6 and 7) and other human rights standards on the use of force.<sup>61</sup> Also, the authorities must carry out independent and impartial investigations into all allegations of extrajudicial executions or other unlawful killings, ensure that victims and their families have access to effective remedies and receive full reparation in accordance with Paraguay's obligations under the Covenant.

**Amnesty International recommendations to the Paraguayan State**

- Conduct a prompt, independent and impartial investigation into all 17 killings – 11 peasants and six police officers – during the eviction that took place on 15 June 2012 in Curuguaty and for those responsible to be brought to justice.
- Ensure that also the police shootings on 15 June 2012 are independently and impartially investigated taking into account all relevant lines of investigations. All those responsible for the alleged excessive use of force, extrajudicial executions or other unlawful killings as well as any other human rights violations must be brought to justice.
- Ensure that all those charged with offences in connection with the violence in Curuguaty in 15 June 2012 receive a fair trial in line with international human rights standards.
- Ensure independent and impartial investigations into allegations of torture and other ill-treatment of detainees and for those responsible to be brought to justice.
- Ensure that all victims of human rights violations in connection with the events of 15 June 2012 and their families receive full reparations, including Miguel Angel Correa who was arbitrarily detained in connection with the killings of the police officers during the clashes in Curuguaty.

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<sup>61</sup> Article 3 of the UN Code of Conduct for Law Enforcement Officials states that they “may use force only when strictly necessary and to the extent required for the performance of their duty.” According to Principle 4 of the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, they “shall, as far as possible, apply non-violent means before resorting to the use of force and firearms. They may use force and firearms only if other means remain ineffective or without any promise of achieving the intended result.” Principle 5 states that “whenever the lawful use of force and firearms is unavoidable, law enforcement officials shall: ... [e]xercise restraint in such use and act in proportion to the seriousness of the offence and the legitimate objective to be achieved”. Principle 9 states that “intentional lethal use of firearms” should only be used “when strictly unavoidable in order to protect life”.

## **RIGHT TO FREEDOM OF OPINION AND EXPRESSION, ASSOCIATION AND ASSEMBLY (ARTICLES 19, 21 AND 22)**

### ***(Questions 24 and 25 in the list of issues)***

Indigenous leaders and organizations, as well as those representing them and supporting their demands, have been subjected to discrediting statements in the media and by public officials. Amnesty International is concerned at reports of human rights defenders advocating for the rights of Indigenous Peoples being harassed and prevented from carrying out their work without interference.

For example, Amnesty International documented verbal death threats against two Indigenous leaders of the Kelyenmagategma Indigenous community from workers of a private company who claimed ownership over the ancestral land, in Puerto Colon. The leaders were accompanying two delegates from the Inter-American Commission of Human Rights to verify the situation of the community.<sup>62</sup>

Amnesty International remains particularly concerned at the legal proceedings faced by four members of *Iniciativa Amotocodie*, a non-governmental organization working to protect the rights of uncontacted Ayoreo Indigenous groups living in the Paraguayan Chaco. Investigations against these four people started after the organization publicly declared its opposition to a scientific expedition called “Dry Chaco 2010” on the grounds that it could harm the rights of uncontacted Indigenous Peoples. The expedition was suspended by the Paraguayan Government on 12 November 2010.<sup>63</sup>

Amnesty International is concerned that the investigations and legal proceedings against the organization and these four individuals in particular could be in reprisal for the concerns they raised regarding this expedition.<sup>64</sup>

The initial investigation started in November 2010 in relation to the “false reporting of a punishable offence”, after a meeting organized by the Public Prosecution Service’s own Department of Ethnic Rights, supposedly in order to “inform” the Union of Ayoreo Natives of Paraguay of the scientific expedition. During the meeting, a complaint was reportedly made that *Iniciativa Amotocodie* had put pressure on other Ayoreo leaders and representatives and tricked them into signing a document opposing the presence of the scientists. Members of *Iniciativa Amotocodie* denied the allegation.

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<sup>62</sup> Amnesty International, *Paraguay. Indigenous leaders receive death threats*. Urgent Action, 10 September 2010, AMR 45/005/2010, <http://amnesty.org/en/library/info/AMR45/005/2010/en>.

<sup>63</sup> Amnesty International, *Transforming Pain into Hope: Human Rights Defenders in the Americas*, AMR 01/006/2012, 7 December 2012, <http://amnesty.org/en/library/info/AMR01/006/2012/en>, p. 25.

<sup>64</sup> See Amnesty International Public Statement: *Paraguay: Raid on NGO may be in reprisal for its public criticism of scientific expedition*, 6 December 2010, <http://www.amnesty.org/en/library/info/AMR45/007/2010/en> and Amnesty International Public Statement *Amnesty International is concerned about current legal proceedings against human rights defenders in Paraguay* 21 July 2011, <http://www.amnesty.org/en/library/info/AMR45/004/2011/en>.

As part of the investigation, a search warrant for the organization's office was issued. The offices of the NGO were raided on 1 December 2010, without prior warning; staff only discovered a raid was taking place when they arrived an hour later.

The investigations continued for two years, with the evident interference and uncertainty for the organization's work. The prosecutor in the case has changed several times and hearings have been suspended on a number of occasions. In August 2012, the prosecutor failed to substantiate the charges and requested a temporary suspension of proceedings to further investigate the case. As charges were not substantiated, the judge could have completely dismissed the case but decided to act in accordance with the prosecutor's request. An appeal from the defence was denied in September 2012. Within a year from the temporary suspension, the investigation can be re-opened at any time, which again leaves the four members of Iniciativa Amotocodie under uncertainty.

#### **Amnesty International recommendations to the Paraguayan State**

- Ensure human rights defenders, including organizations and individuals who advocate for the rights of Indigenous Peoples in Paraguay are able to carry out their work without threats or obstacles of any kind.

## LIST OF AMNESTY INTERNATIONAL DOCUMENTS

### Indigenous Peoples' rights and discrimination

- Trucks, lack of water and little food: Indigenous community struggles to survive by the side of a road in Paraguay, 17 December 2012; <http://www.amnesty.org/en/news/trucks-lack-water-and-little-food-indigenous-community-struggles-survive-side-road-paraguay-2012>
  
- Urgent Action. Further information: Return of Indigenous land still pending, 7 December 2012, AMR 45/007/2012; <http://amnesty.org/en/library/info/AMR45/007/2012/en>
  
- Land dispute victory for displaced indigenous community, 3 February 2012; <http://www.amnesty.org/en/news/paraguay-land-dispute-victory-displaced-indigenous-community-2012-03-02>
  
- Through Our Own Eyes: The Sawhoyamaya and Yakye Axa Indigenous Peoples in Paraguay, 23 November 2011. AMR 45/003/2011; <http://amnesty.org/en/library/info/AMR45/003/2011/en>
  
- Paraguay to restore Indigenous community's ancestral lands, 29 September 2011; <http://www.amnesty.org/en/news-and-updates/paraguay-restore-indigenous-community's-ancestral-lands-2011-09-29>
  
- Paraguay must no longer ignore indigenous peoples' demands, 12 August 2011; <http://www.amnesty.org/en/for-media/press-releases/paraguay-must-no-longer-ignore-indigenous-peoples'-demands-2011-08-12>
  
- Briefing to the UN Committee on the Elimination of Racial Discrimination, 8 July 2011, AMR 45/001/2011; <http://amnesty.org/en/library/info/AMR45/001/2011/en>
  
- Indigenous Peoples tell their own stories, 9 December 2010; <http://www.amnesty.org/en/for-media/press-releases/paraguay-indigenous-peoples-tell-their-own-stories-2010-12-09-0>
  
- Paraguay condemned for the third time by the Inter-American Court of Human Rights for violating the rights of indigenous peoples; 29 September 2010, <http://amnesty.org/en/library/info/AMR45/006/2010/en>
  
- Urgent Action. Indigenous leaders receive death threats, AMR 45/005/2010; 10 September 2010; <http://amnesty.org/en/library/info/AMR45/005/2010/en>
  
- Submission to the UN Universal Periodic Review: Tenth session of the UPR Working Group of the Human Rights Council January 2011, July 2010, AMR 45/003/2010; <http://amnesty.org/en/library/info/AMR45/003/2010/en>
  
- 'We're only asking for what is ours': Indigenous peoples in Paraguay, 31 March 2009; AMR 45/005/2009; <http://amnesty.org/en/library/info/AMR45/005/2009/en>

**Killings in Curuguaty (15 June 2012)**

- Investigation must lead to justice for Curuguaty Killings, 17 December 2012; <http://www.amnesty.org/en/for-media/press-releases/paraguay-investigation-must-lead-justice-curuguaty-killings-2012-12-17>
- Urgent Action. Arbitrary detention in Paraguay: Miguel Angel Correa Franco, 10 July 2012, AMR 45/003/2012; <http://amnesty.org/en/library/info/AMR45/003/2012/en>

**Other**

- Raid on NGO may be in reprisal for its public criticism of scientific expedition, 6 December 2010; <http://amnesty.org/en/library/info/AMR45/007/2010/en>

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