

# Survival



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We are the global movement  
for tribal peoples' rights. We help  
them defend their lives, protect  
their lands and determine their  
own futures.

31 May 2016

To whom it may concern,

Please find enclosed Survival International's alternative report for the 90<sup>th</sup> Session of CERD, which will take place August 2016. Survival International has consultative status with ECOSOC.

This report provides a summary of Paraguay's human rights violations against the Ayoreo Totobiegosode tribe.

Survival is happy to provide further information if it is required.

Please acknowledge receipt of this report using the contact details given above.

Yours sincerely,

Stephen Corry

Director of Survival International

Founded in 1969  
Right Livelihood Award 1989

Survival International Charitable Trust  
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## Alternative Report TO CERD: 90<sup>th</sup> Session Human rights violations against the Ayoreo Totobiegosode tribe in Paraguay

### Introduction

1. The Ayoreo Totobiegosode live in the north of Paraguay, in the Chaco. Some members of the tribe are uncontacted: they live in the forest avoiding all contact with outsiders.
2. Cattle ranchers occupy their land and are intent on deforesting it. The Paraguayan Chaco has the highest rate of deforestation in the world.<sup>1</sup>
3. Many Ayoreo have been forced to abandon their nomadic way of life and have been settled in communities spread out across region.
4. In 1979 and 1986, missionaries from the New Tribes Mission organized "manhunts" to force the Ayoreo Totobiegosode out of the forest. In 1986, five Ayoreo were killed in violent clashes during the raid.
5. Others have been forced out by deforestation. The continued invasion of their land meant they had to continually abandon their homes, which made life very difficult. One group was awoken in 1994 by a bulldozer destroying their gardens. Not knowing what the vehicle was, they thought it was a 'beast with metal skin'. The family was later forced out of their territory in 2004.
6. Contact with mainstream society has proven disastrous for the Ayoreo. Those who have made contact now suffer disproportionate rates of disease. This is in part due to their lack of immunity to foreign-introduced diseases at the point of contact.

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<sup>1</sup> M.C Hansen et al (2013), titled, 'High-Resolution Global Maps of 21st-Century Forest Cover Change'.

7. The Ayoreo Totobiegosode have been claiming legal title to their land since 1993, in accordance with the Paraguayan constitution, but the claim has made only partial progress.
8. The Government has been well informed about violations of the tribe's rights for many years but has not complied with international and Paraguayan laws that guarantee the Ayoreo's right to remain on their land.
9. In February 2016, the Inter-American Commission on Human Rights issued a number of precautionary measures against the Paraguayan government in order to protect the uncontacted Ayoreo. This included the requirements that Paraguay:
  - a. Implement measures to stop the continued deforestation of Ayoreo land
  - b. Create a mechanism to protect against and avoid the entry of third parties
10. As will be demonstrated below, the government has been slow to act and its proposed plans are ineffective.
11. Furthermore, Paraguay has continued to violate Articles 1, 2 and 5 of the *International Convention on the Elimination of all forms of Racial Discrimination*. The details of these violations will be discussed in further detail below.

### Cattle Ranchers

12. The agricultural firms currently occupying Ayoreo land are the Argentinian company Carlos Casado S.A (a subsidiary of the Spanish company Grupo San Jose), the Brazilian firm Yaguarete Pora S.A and Itapoti SA.
13. They have been caught – through the use of satellite imagery – clearing the forest and constructing buildings inside the Ayoreo's land claim. Although the cases have been reported to government authorities, a weak and corrupt judicial system has failed to prevent further incursions on the land, or allowed for the return of the land to its indigenous owners.
14. Agricultural firm Carlos Casado S.A. owns 36,000 hectares of land in the core area of the Ayoreo's ancestral homeland.
15. In August 2012, the Paraguayan government confirmed in a letter to Ayoreo organization, 'La Organización Payipie Ichadie Totobiegosode' (OPIT) that the company had begun construction of a road and reservoir without the required license.
16. The company subsequently wrote to the government offering to consider a payment for the land, and the subsequent transfer of title to the Ayoreo. But no action has since been taken against the company, and there has been no progress on transferring the land to the Ayoreo.
17. Beef company Yaguarete Pora S.A. owns 78,549 hectares of the Ayoreo's land. Thousands of hectares have already been illegally cleared by the company's workers. Yaguarete Pora does not have the legal right to deforest any of the land inhabited by uncontacted Ayoreo, or land that is being claimed as ancestral property.

18. In May 2010, the company was found guilty of hiding evidence proving uncontacted Indians were living on its land. It was issued with an unprecedented fine and its environmental licence (required to carry out work on the land) was removed. Since then, the environmental licences have been repeatedly renewed and then revoked again.
19. Satellite imagery taken over several years shows that the company continues to deforest. The latest images are from February 2016.
20. Parcels of land that have been legally titled to the Ayoreo have also been invaded by cattle ranchers.
21. Since the issuance of the Inter-American Commission on Human Rights' Precautionary Measures in February 2016, the government has met with the Ayoreo. However, it has failed to assure the community that it will stop the companies from deforesting the land. The only way to guarantee the end of deforestation and the entry of third parties is to return the land to the Ayoreo.

## Health

22. According to the World Health Organization, tuberculosis amongst indigenous peoples in Paraguay is 10 times more prevalent than the national average. Only 25% of indigenous peoples in Paraguay are treated at health posts, according to the Paraguayan Ministry of Public Health.
23. Ayoreo Totobiegosode have suffered acute health problems since coming into contact with outsiders. Like all previously uncontacted peoples, they have little or no immunity to diseases common in the Western world.
24. Today many Ayoreo suffer from respiratory diseases, as well as malnutrition and diabetes. At least four adults have died from a TB-like illness in the past decade.
25. The Paraguayan government has been repeatedly informed about the state of the Ayoreo's health. However, local health promoters remain under-equipped and under-funded and medical attention is minimal.
26. The Ayoreo are currently receiving health treatment due to funds raised by a Swiss organization, 'Fundación Suiza', which allows them to travel to the nearest hospitals. State help, however, has not been present.
27. Since the issuance of the Precautionary Measures by the Inter-American Commission on Human Rights, the government has stated that it will offer health assistance, but it has yet to materialize.

## Legal Position

### *Domestic*

28. Paraguay's 1992 Constitutional Law (Chapter V, Article 64) ensures that "Indian people have a right, as communities, to a shared ownership of a piece of land, which will be sufficient both in terms of size and quality for them to preserve and to develop their own lifestyles."
29. The same Article states: "The removal or transfer of Indian groups from their habitat, without their express consent, is hereby prohibited."

30. Neither the companies nor the State have consulted the Ayoreo about work on their land. In rare instances where consultation and consent has been sought, the Ayoreo have expressly rejected the presence of outsiders inside their land claim. Furthermore, as it is impossible to ensure the informed consent of the uncontacted Ayoreo, it is vitally important that their land not be interfered with.

### ***International Convention on the Elimination of all forms of Racial Discrimination***

31. Paraguay has ratified the International Convention on the Elimination of all forms of Racial Discrimination. Particular attention should be paid to Article 1.1. This requires Paraguay to eliminate racial discrimination, in order to allow peoples like the Ayoreo to enjoy human rights and fundamental freedoms on an equal footing with the rest of Paraguayan society.

32. Paraguay has also violated Article 2.2 in failing to 'pursue by all appropriate means and without delay a policy of eliminating racial discrimination' against the Ayoreo.

33. Furthermore, Paraguay has violated Article 5 by failing to eliminate racial discrimination in both economic, social and cultural rights and the right to public health and medical care.

34. Additionally, the CERD has recommended that States Parties, 'recognize and protect the rights of indigenous peoples to own, develop, control and use their communal lands, territories and resources';<sup>2</sup> and ensure that 'no decisions directly relating to their rights and interests are taken without their informed consent.'

35. As has been demonstrated above, the Paraguayan government has failed to comply with these requirements.

### ***ILO Convention 169***

36. In ratifying ILO Convention 169, Paraguay has undertaken to protect and preserve the environment of the territories inhabited by indigenous peoples.

37. Although the ILO 169 does not address the specific situation of uncontacted tribes, Article 14.1 states that 'the rights of ownership and possession of the peoples concerned over the lands which they traditionally occupy shall be recognized.' It emphasizes that 'particular attention shall be paid to the situation of nomadic peoples' of which category the uncontacted Ayoreo Totobiegosode fall under.

38. The choice of those Ayoreo still living entirely in the forest to remain uncontacted should be regarded as their response under Article 15.2 of the Convention.

39. Paraguay has further violated Article 7.3 which states: "Governments shall ensure that, whenever appropriate, studies are carried out, in co-operation with the peoples concerned, to assess the social, spiritual, cultural and environmental impact on them of planned development activities. The results of

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<sup>2</sup> CERD, A/52/18 (n.121) Annex V, Paragraph 5

these studies shall be considered as fundamental criteria for the implementation of these activities”.

## Conclusion

40. Uncontacted Ayoreo Indians face the very real risk of extinction if the invasion of their land is allowed to continue.
41. It is the responsibility of the Paraguayan government to put a stop to the expansion of cattle ranching in the Chaco, yet it has repeatedly failed to stand by its promises to protect its most vulnerable peoples. Any actions that are taken against cattle firms illegally deforesting land are inadequate and ineffective.
42. We urge the CERD to take up this pressing issue with the Paraguayan government during its forthcoming review.
43. Survival International recommends that Paraguay:
  - a. Purchase or expropriate as a minimum the 550,000 hectares of land claimed by the Ayoreo Totobiegosode tribe since 1993, so the title can be transferred to the Indians.
  - b. Take immediate legal action against the companies working inside the Ayoreo's land claim.
  - c. Provide appropriate emergency and ongoing medical care for contacted members of the tribe.
  - d. Implement a programme to restore land degraded by the deforestation and ranching.
  - e. Implement measures to stop the continued deforestation of Ayoreo land
  - f. Create a mechanism to protect against and avoid the entry of third parties