

# PARAGUAY

BRIEFING TO THE PRE-  
SESSIONAL WORKING  
GROUP OF THE UN  
COMMITTEE ON  
ECONOMIC, SOCIAL AND  
CULTURAL RIGHTS, 53<sup>TH</sup>  
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# I. INTRODUCTION

Amnesty International is submitting this briefing to the United Nations (UN) Committee on Economic, Social and Cultural Rights (the Committee) in light of the meeting of the pre-sessional Working Group to draft the list of issues for the forthcoming examination of Paraguay's fourth periodic report on the implementation of the International Covenant on Economic, Social and Cultural Rights (the Covenant).

Amnesty International provides information on the enforceability of economic, social and cultural rights in Paraguay and on the effectiveness of the State's legislation in protecting the rights of Indigenous Peoples in relation to articles 1, 2, 12 and 15 of the Covenant. This briefing also covers the enforceability of sexual and reproductive rights in relation to articles 3, 10 and 12. This information is based on Amnesty International's work on Paraguay. The briefing is not an exhaustive review of the implementation of the Covenant in Paraguay; it instead highlights specific concerns regarding cases and thematic issues.

## II. NON DISCRIMINATION (ART. 2)

### ANTI DISCRIMINATION LEGISLATION

According to the Paraguayan Constitution discrimination is prohibited and the state has the duty to remove all obstacles that contribute to it (Articles 46-48). However, no concrete measures have been put in place to effectively implement this constitutional provision. In fact, Paraguay does not yet have specific legislation aimed at overturning discriminatory practices and customs, and thus no legal framework for either taking proactive measures towards promoting equality, or for requiring that any de-facto discrimination is addressed.<sup>1</sup>

A draft anti-discrimination law was tabled in the Senate seven years ago, 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 that the draft should be discussed and passed by the plenary of the Senate. However, after almost five years since that recommendation, no further steps have been taken to speed up the approval of this draft.<sup>3</sup>

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<sup>1</sup> In April 2013 the UN Human Rights Committee expressed concern about the lack of legislation to combat discrimination. Concluding Observations on the third periodic report of Paraguay, adopted at the 107th session (11–28 March 2013), CCPR/C/PRY/CO/3, 29 April 2013, para. 9.

<sup>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> According to the State report to the Committee, the draft is still pending a decision by the Congress Human Rights Commission, Fourth State Report of Paraguay, 6 October 2011, E/C.12/PRY/4, page 14.

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

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

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

### DISCRIMINATION AGAINST INDIGENOUS PEOPLES

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

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

The absence of specific legislation to eliminate discriminatory practices considerably affects Indigenous Peoples in Paraguay, who have historically been marginalized and subjected to

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

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

<sup>6</sup> Law N° 919/96.

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

grave and systematic abuses.<sup>8</sup> In August 2011 the UN Committee for the Elimination of Racial Discrimination (CERD) expressed concern at the lack of statistics and reliable disaggregated data about the demographic composition of the population, particularly in the case of Indigenous Peoples and Afro-descendants communities in Paraguay, which makes the planning and implementation of policies and programmes aimed at addressing discrimination more difficult.<sup>9</sup>

In 2010 the UN Permanent Forum on Indigenous Issues (UNPFII) drew attention to the lack of access to health and education services by Indigenous groups in the Chaco area.<sup>10</sup> Paraguay's UN Development Assistance Framework (UNDAF) 2007-2011, which defined the overall strategy and actions for the UN presence in Paraguay as agreed with the government, recognized that there was a general absence of policies directed at Indigenous Peoples.<sup>11</sup> This absence of policies has not fundamentally changed since the adoption of the Framework.

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

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

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

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

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

<sup>11</sup> 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.

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

recommendations of the Truth and Justice Commission to address racial discrimination against Indigenous People in Paraguay. That 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>13</sup> Amnesty International believes that concerns and recommendations made by the CERD have not yet been addressed.

## VIOLATION OF THE RIGHT TO CULTURE AND ENJOYMENT OF LAND AND RESOURCES

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

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

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

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

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

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

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

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

<sup>18</sup> See, International Labour Conference: Observations and information concerning particular countries, 91<sup>st</sup> session, 2003, provisional record. Amnesty International is not aware of further detailed updated



The state's failure to accord Indigenous Peoples legal recognition and protection to their lands, means that Indigenous Peoples often do not have access to and cannot use and control ancestral lands and resources. This prevents them from sustaining their traditional activities such as hunting or fishing, or their cultural and spiritual practices. This has been the case of the indigenous communities Yakye Axa and Sawhoyamaya, among others (see page 12).

In 2011 Paraguay supported a number of recommendations under the Human Rights Council's Universal Periodic Review (UPR) process, which called for concrete measures to strengthen the rights of Indigenous Peoples to their ancestral lands.<sup>19</sup> In August 2012, in its written responses to the UN Human Rights Committee in the context of its review, the authorities repeated their commitment to address the persistent violations of the rights of Indigenous Peoples, making land rights a "priority issue".<sup>20</sup>

While welcoming the commitments, Amnesty International believes that actions taken by the authorities to ensure that Indigenous Peoples can enjoy their right to traditional land remain insufficient. Domestic legal and administrative measures for addressing Indigenous land claims in Paraguay remain inadequate and ineffective, which has already been criticized by this Committee and by other international human rights bodies scrutinizing Paraguay's record on Indigenous Peoples' rights.<sup>21</sup>

The Inter-American Court of Human Rights has stressed the need for a specific national land claims mechanism in order to address this fundamental issue, and for this mechanism to be established with the full participation of Indigenous Peoples. The 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

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figures for the Chaco region. However, since that time, there have been no appropriate measures and plans to effectively deal with Indigenous' land titling.

<sup>19</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>20</sup> Responses by the Paraguayan government to the list of issues to be taken up in connection with the consideration of the third periodic report of Paraguay to the Human Rights Committee (*Respuestas del Gobierno de Paraguay a la lista de cuestiones que deben abordarse al examinar el tercer informe periódico de Paraguay*), CCPR/C/PRY/Q/3/Add.1, August 2012, page 5, available at: [http://www2.ohchr.org/english/bodies/hrc/docs/AdvanceVersions/CCPR-C-PRY-Q-3-Add1\\_sp.doc](http://www2.ohchr.org/english/bodies/hrc/docs/AdvanceVersions/CCPR-C-PRY-Q-3-Add1_sp.doc).

<sup>21</sup> CESCR Concluding Observations on Paraguay, E/C.12/PRY/CO/3, 4 January 2008, para. 23 (b); UNPFII Report on the mission to Paraguay, E/C.19/2010/5, 18 January 2010, Recommendations (section D); ILO Committee of Experts on the Application of Conventions and Recommendations: Individual Observation concerning Indigenous and Tribal Peoples Convention, 1989 (No. 169) 2010, p.3; CERD Concluding Observations on Paraguay, CERD/C/PRY/CO/1-3, para. 15, 1 September 2011; HRC Concluding Observations on Paraguay, CCPR/C/PRY/CO/3, para. 28, 29 April 2013.

fulfillment of their right to property.”<sup>22</sup>

## LACK OF COMPLIANCE WITH INTERNATIONAL JUDGMENTS OVER INDIGENOUS PEOPLES' LAND CLAIMS

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

In 2005 and 2006, in two different judgments, the Court ordered Paraguay to return the ancestral land to the Enxet Indigenous communities of Yakye Axa and Sawhoyamaxa, respectively. For over 20 years, the two communities have been forced to live in temporary homes on a narrow strip of infertile, inhospitable land by the side of the Pozo Colorado-Concepción highway because private landowners moved in and took over their lands. The communities are dependent upon irregular food and water supplies and concerns remain about adequate healthcare and education.<sup>23</sup> On another similar case, in August 2010 the Court also ruled in favour of members of the Xákmok Kásek indigenous community.<sup>24</sup>

In its judgments, the Court found that the rights to judicial protection, the right to property and right to life of members of the three communities had been violated.<sup>25</sup> In the case concerning the Sawhoyamaxa and Yakye Axa indigenous communities, The Court also ordered the implementation of a development fund for the communities and the provision of supplies and services for their survival including medical care, food and clean drinking water, for as long as the communities remained landless. The three-year deadline established by the Court

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<sup>22</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>23</sup> Amnesty International, “*We’re only asking for what is ours*”, *Indigenous Peoples in Paraguay - Yakye Axa and Sawhoyamaxa*, (Index: AMR 45/005/2009), March 2009, <http://amnesty.org/en/library/info/AMR45/005/2009/en>.

<sup>24</sup> Case Xámkok 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>25</sup> In the judgements, the Inter-American Court found that the State was responsible for a number of preventable deaths. In the case of the Sawhoyamaxa, the Inter-American Court held the authorities responsible for the deaths of 18 children because of their failure to provide regular medical care and appropriate medicines. Case *Sawhoyamaxa Indigenous Community Vs. Paraguay*, judgment of 29 March 2006, para.178

for the state to formally and physically convey to the Indigenous communities their traditional lands has passed (for the Yakye Axa on 13 July 2008 and for the Sawhoyamaya on 19 May 2009).<sup>26</sup> As for the Xákmok Kásek, the deadline was September 2013.

In its periodic report to the Committee, the government argue that the Inter-Institutional Commission for the Compliance with the International Judgments (*Comisión Interinstitucional para el Cumplimiento de las Sentencias Internacionales, (CICSI)*) which coordinates the state's compliance with international judgments, including the three judgments related to Indigenous land claims, has achieved important results towards the compliance of the judgments.<sup>27</sup>

Contrary to this view, Amnesty International considers that the CICSI has been ineffective in securing the traditional lands to the communities affected. Indigenous communities have expressed concerns that for many years the Commission has prioritized pursuing alternative land proposals without first exhausting with due diligence other options such as conducting serious negotiations with the current owners of the ancestral lands.<sup>28</sup>

In December 2012, the Vice President of the Government was appointed President of the CICSI and the Minister of Justice and Labour assumed the coordination of the plans and programmes of the institutions and governmental bodies that are part of the CICSI, replacing the General Prosecutor.<sup>29</sup> This reform has been perceived by national and international organisations as a positive move towards the strengthening of the mechanism, since it potentially provides more political power to ensure compliance with international decisions. It is vital that plans and actions adopted by the CICSI are carried out with the full participation of the communities affected and with free, prior and informed consultation in line with international human rights obligations on this matter.

In its report to the Committee, the Paraguayan state mentions the implementation of the Policy on Quality of Life and Health Equity (*Políticas Públicas en Calidad de Vida y Salud con Equidad*) (2008-2013) and the National Indigenous Health Policy (*Política Nacional de Salud Indígena*), which aim at ensuring access to health to traditionally segregated communities. In the case of the three communities mentioned in this briefing, Amnesty International has received information that until June 2012 a specific programme aimed at providing health to the communities was put in place in Presidente Hayes department, where

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<sup>26</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>27</sup> State's response, para 8. The Commission was created in February 2009 and is formed by different governmental bodies including the General Prosecutor's office. In January 2013 the Decree 10.449 restructured the CICSI and in March 2013 another Decree (10.744) extended its role to include the supervision of the implementation of recommendations given by international supervisory bodies. See also <http://www.mjt.gov.py/interna.php?id=347&sec=noticias>

<sup>28</sup> Amnesty International interviews with the communities and Tierraviva, the NGO that represents the communities, in November 2012 and follow up conversations with Tierraviva.

<sup>29</sup> Presidential Decree 10.449, 28 December 2012.

the communities are located. However, since then the office in charge of implementation lost autonomy –including budget- with the consequence of having less capacity to continue providing the service. Amnesty International was informed that at present some of the facilities that have been built to provide services to the communities are inactive.

#### *Update on Yakye Axa case*

In January 2012 an agreement between Paraguayan authorities and a land owner in the country's central region opened the door for the Yakye Axa to move to 12,000 hectares of land within the ancestral territory of the Enxet ethnic group in the Chaco region.<sup>30</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, efforts to clear up the alternative road were cancelled during the first months of 2012 due to adverse weather and intense flooding in the area. The community complained that the Ministry of Public Works (*Ministerio de Obras Públicas*) – in charge of the task – did not resume the works afterwards until end of 2012. In January 2013 the Minister of Justice met with community representatives to discuss a plan for the cleaning of the alternative road. At the time of writing, this alternative road has not yet been cleared. With regard to the road that would allow direct access –and which was part of the original agreement- representatives of the community have informed Amnesty International that an agreement with the landowners whose lands would affect this road, has not yet been reached. In summary, to March 2014, Yakye Axa cannot yet move into their land due to the lack of access to it.

The Yakye Axa Indigenous community is also waiting for the authorities to set up a US\$950,000 fund aimed at community development as the 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.

#### *Update on the Sawhoyamaya case*

The Sawhoyamaya Indigenous community had 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. In September 2011 an initial agreement was reached between the Paraguayan authorities, the owner of the land and Sawhoyamaya Indigenous community leaders. This laid the groundwork for the restitution of the community's ancestral

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<sup>30</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.

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>31</sup> At the same time, the Paraguayan Supreme Court requested information from the government about the measures carried out to comply with the Inter-American Court judgment.

In March 2013 the Sawhoymaxa indigenous community returned to a portion of their traditional land even though the restitution had not taken place yet; the community felt that this was the only option left after the failure of the negotiations between the state and the individual with legal titles over the lands. In August 2013, the government submitted an expropriation draft to the Congress<sup>32</sup> to allow for the restitution of the land to the community. At the time of writing the draft was still under discussion by different commissions in the Senate.

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

According to official statistics from 2008, the Xákmok Kásek consists of some 60 families. It has a claim over 10,700 hectares of land situated within the confines of a private ranch in the Paraguayan Chaco. At the time of writing the authorities had been engaged in talks with the community. However, community members have complained 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 action 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 their right to traditional lands is upheld in line with the judgments of the Inter-American Court, these communities continue to be denied their right to enjoyment of their culture in accordance with international standards, including articles 1 and 15 of the Covenant.

### **THE RIGHT TO CONSULTATION AND FREE, PRIOR AND INFORMED CONSENT**

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

Amnesty International welcomes the commitment of the Paraguayan authorities to adopt measures to ensure the fulfilment of the right of Indigenous Peoples to consultation with the

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<sup>31</sup> Amnesty International, Urgent Action, *Tierras indígenas en peligro en Paraguay*, 6 June 2012 (Index: AMR 45/001/2012).

<sup>32</sup> See <http://www.nanduti.com.py/v1/noticias-mas.php?id=76565&cat=Nacionales>

aim to obtain their free, prior and informed consent.<sup>33</sup> In 2010 the National Institute for Indigenous Affairs (INDI) passed a resolution on consultation. Amnesty International believes that that resolution is an inadequate response to address this crucial issue. The resolution establishes that the INDI shall intervene in all consultation processes with Indigenous communities. Consultation processes done without the INDI inspection and evaluation are not considered valid by the institution.<sup>34</sup>

The requirement that the INDI – as an external institution which is not seen as a representative institution by many communities<sup>35</sup> – play a lead role in scrutinizing and evaluating consultation processes is problematic as it could undermine the obligation to consult to obtain free, prior and informed consent through representative institutions as required by the UN Declaration on the Rights of Indigenous Peoples.<sup>36</sup> The resolution is also problematic because it establishes that the role of the INDI is to define the parameters of the consultation without mentioning the need to consult and agree on these with the affected communities.

Amnesty International has been informed that from mid-2013 a regional effort to pass a resolution to ensure participation at the level of local government has been developed in Presidente Hayes department with the participation of Indigenous Peoples. This resolution still needs to be approved.

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

- Adopt an effective national land claim mechanism to ensure the rights to culture and ancestral land of Indigenous Peoples with their full participation as required by the Inter-American Court of Human Rights.
- Ensure that the National Institute for Indigenous Affairs works as an autonomous institution that represents the interests of Indigenous Peoples, with sufficient funds and with the mandate to assist other government institutions in ensuring full compliance with international obligations and standards with regard to Indigenous Peoples' rights.
- Take all the necessary actions aiming at the restitution of the traditional lands to the Sawhoyamaya Indigenous community as established by the 2006 Inter-American Court judgment,

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<sup>33</sup> See Responses by the Paraguayan Government to the list of issues for the Human Rights Committee, CCPR/C/PRY/Q/3/Add.1, page. 5 August 2012.

<sup>34</sup> INDI, Resolution No.2039/10, 11 August 2010, available in [http://www.undp.org/content/dam/undp/library/Democratic%20Governance/Spanish/Orientaciones-Basicas-para-el-trabajo-del-Funcionario-Publico-con-Pueblos-Indigenas\\_Paraguay.pdf](http://www.undp.org/content/dam/undp/library/Democratic%20Governance/Spanish/Orientaciones-Basicas-para-el-trabajo-del-Funcionario-Publico-con-Pueblos-Indigenas_Paraguay.pdf);

<sup>35</sup> Amnesty International interviews with communities and Tierraviva. This concern has also been highlighted by the Committee on the Elimination of Racial Discrimination, Concluding observations on Paraguay, para 14.

<sup>36</sup> Article 19 of the UNDRIP

and ensure that the expropriation draft currently under discussion in the Congress is promptly adopted.

- Guarantee the restitution of the ancestral land to the Xámok Kásek as imposed on Paraguay by the Inter American Court of Human Rights in its judgment of 2010.
- Ensure that the Yakye Axa Indigenous community is able to move to their land without further delays and that a community fund is set up as the Inter-American Court of Human Rights had ordered.
- Incorporate standards on consultation and free, prior and informed consent into laws and policies following consultation with Indigenous, including by ensuring that communities' traditional decision-making procedures are respected.
- Adopt and publish an action plan to ensure full compliance with past and future recommendations by UN treaty bodies – including the UN Committee on the Elimination of Racial Discrimination, the Committee on Economic, Social and Cultural Rights and the Human Rights Committee – as well as other human rights mechanisms, with regard to Indigenous Peoples.

## IV. SEXUAL AND REPRODUCTIVE RIGHTS (ARTS. 3, 10, 12)

Abortion remains generally criminalized in Paraguay. The only circumstance in which pregnant women and girls seeking an abortion are not punished is when the foetus dies as an indirect result of a necessary medical intervention to avert a serious threat to the life or the health of the pregnant woman.<sup>37</sup> In any other circumstances, even if pregnancy is the result of rape, incest or when the foetus has a severe malformation, abortion is not permitted and women and girls who undergo an abortion could face prison sentences – from 15 months to 10 years depending on the circumstances. 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>37</sup> Article 109 of Criminal Code “Direct death as a result of the necessary delivery. Any intervention that results in the indirect death of the foetus during the delivery is not illegal if this is needed and unavoidable to protect the life 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>38</sup> According to official national data<sup>39</sup> the maternal mortality ratio (per 100,000 live births) was 117.4 in 2008, 125.3 in 2009 and 100.8 in 2010. Between 2005 and 2009, abortion accounted for 24 percent of maternal deaths; obstetric complications were the first cause of maternal mortality (27 percent) during the same period. According to the World Health Organization, the first step to avoiding maternal deaths and injuries is to ensure that women have access to family planning and safe abortion with the aim of reducing unwanted pregnancies and the negative health outcomes associated with unsafe abortion.<sup>40</sup>

Several treaty bodies have expressed concerns that women and girls do not seek medical assistance for post-abortion care after an unsafe, clandestine abortion. This is due to concerns about lack of confidentiality and respect for their right to privacy, including fear of being reported to law enforcement and subsequent prosecution for undergoing an illegal abortion. These bodies have consistently called on countries, including Paraguay, to adopt measures to remove punitive provisions imposed on women who undergo abortion, to safeguard doctor-patient confidentiality specifically when treating women for abortion complications; and to review and modify its abortion legislation to ensure that women do not need to resort to unsafe abortions. They have also recommended the implementation of sexual education programmes to avoid unwanted pregnancies as well as passing a law on sexual and reproductive rights.<sup>41</sup>

In its periodic report, the State referred to the implementation of a campaign in 2010 to prevent unwanted pregnancies among 15 to 19 year old girls. However, it does not explain the campaign's impact in preventing such pregnancies. Complications arising from pregnancy and child birth are the leading cause of death for 15- to 19-year-old girls in the developing world. In the region as a whole, adolescent pregnancy accounts for 18 percent of all births, most of which are unwanted.<sup>42</sup> The impact adolescent pregnancy has on the health and human rights, including the right to education, of girls and young women have been consistently addressed by treaty bodies.<sup>43</sup>

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<sup>38</sup> UN Economic Commission for Latin America and the Caribbean, <http://www.cepal.org/celade/noticias/paginas/6/47466/VickyCamacho.pdf>

<sup>39</sup> Ministry of Health, *Indicadores Basicos de Salud*, 2010 and 2012 Reports. See <http://www.mspbs.gov.py/v2/index.php>

<sup>40</sup> World Health Organization, *Safe Abortion: Technical and Policy Guidance for Health Systems*, 2<sup>nd</sup> edition, Geneva: WHO, 2012.

<sup>41</sup> CESCR Concluding observations on Paraguay, E/C.13/PRY/CO/3, para. 32. Concluding observations of the Committee on the Elimination of Discrimination against Women (CEDAW) on Paraguay, UN Doc. CEDAW/C/PRY/CO/6, 8 November 2011, para. 31. Concluding observations of the Committee against Torture (CAT) on Paraguay, UN Doc. CAT/C/PRY/CO/4-6, 14 December 2011, para. 22.

<sup>42</sup> UNFPA, State of the World's Population Report, *Motherhood in Childhood: Facing the challenge of adolescent pregnancy* (2013).

<sup>43</sup> Committee on the Rights of the Child, *General Comment 4 on Adolescent Health and Development in*



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

A resolution passed by the Ministry of Health in March 2012 seeks to address the current obstacles faced by women and girls who are admitted to hospitals for complications of abortion. The resolution establishes that health centres have an obligation to admit and assist all women without discrimination and to respect their right to privacy.<sup>44</sup> Through this resolution the Ministry of Health also approved the *Manual for the humane treatment of women in a post abortion situation (Manual de Atención Humanizada de Mujeres en situación de post aborto)*, which contains guidelines for health practitioners to ensure that the rights of women and girls with abortion complications are respected.

Local organizations welcomed the resolution and recognized that in some cases it has resulted in the improvement of the treatment received by women and girls admitted in hospitals due to abortion complications.<sup>45</sup> Nevertheless, these organizations have also indicated that there is no clear follow up to this resolution making it hard to evaluate its impact. More efforts are needed to widely publicize the resolution and ensure that health professionals are aware of their obligations to preserve the privacy and the integrity of the patients and provide adequate emergency treatment to women and girls whose health and life is at risk due to unsafe abortions.

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*the Context of the Convention the Rights of the Child* (2003); *KL. v. Peru*, Human Rights Committee (2005); *L.C. v Peru*, CEDAW Committee (2011).

<sup>44</sup> Resolution No.146, 8 March 2012.

<sup>45</sup> Amnesty International interviews with local NGOs working on women's rights in Paraguay in November 2012.

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

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



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