Dear Ms Majodina

104TH SESSION OF THE HUMAN RIGHTS COMMITTEE – PRE-SESSIONAL MEETING ON PARAGUAY

In view of the pre-sessional meeting of the Country Report Task Force for Paraguay during the forthcoming session of the Human Rights Committee in March 2012, Amnesty International would like to draw your attention to the following areas of concern in relation to Paraguay’s implementation of the International Covenant on Civil and Political Rights (ICCPR). Detailed information on these concerns can be found in the enclosed documents as well as the Amnesty International publications referred to below.

1. DENIAL OF THE RIGHTS RECOGNIZED IN THE COVENANT TO INDIGENOUS PEOPLES IN PARAGUAY

Right to culture and enjoyment of land and resources (Article 27)

Official figures suggest that there are around 108,600 Indigenous people in Paraguay – around 1.7 per cent of the population. 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 Paraguayan Constitution recognises the right of Indigenous Peoples to hold communal property and requires the state to provide such lands to them free of charge. In addition, 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. Nevertheless, domestic legal and administrative measures for addressing Indigenous land claims in Paraguay remain inadequate and a high number of Indigenous Peoples in Paraguay do not have full rights to their ancestral land. Current procedures from filing a land claim by an Indigenous community to the eventual return of the land are overly-bureaucratic, difficult to access and in many cases have been demonstrated unfit for this purpose.

For further details regarding Amnesty International’s concerns in relation to the inadequacy of the measures to address Indigenous land claims see in particular the enclosed briefing to the Committee on the Elimination of Racial Discrimination (CERD), pages 12-21.

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1 In its General Comment No. 23 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 (paragraph 3.2 and 7).
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 leads to the violation of Article 27 of the ICCPR as they are unable to sustain their traditional activities such as hunting or fishing, or their cultural and spiritual practices.

Emblematic of this situation, although not the only cases, is the struggle of two Enxet Indigenous communities, the Yakye Axa and Sawhoyamaxa. For over 20 years, they have been forced to live in temporary homes on a narrow strip of infertile, inhospitable land by the side of a highway because their traditional lands are in hands of private owners. The communities are dependent upon irregular food and water supplies. Inadequate infrastructure and shortage of teachers has created obstacles for Yakye Axa and Sawhoyamaxa children in accessing their right to education. Available healthcare for the communities is predominantly palliative rather than preventative and their survival as a community is at risk, which suggests a failure of the state to provide the community with effective access to healthcare.

In 2005 and 2006, the Inter-American Court of Human Rights ordered Paraguay to return the ancestral land of both communities. The three-year deadline established by the Court to comply with the judgments passed for the Yakye Axa on 13 July 2008 and for the Sawhoyamaxa on 19 May 2009. In September 2011, after years of struggle, an agreement was signed between the authorities, landowners and Sawhoyamaxa Indigenous community, which could lead to the restitution of the community’s ancestral land. Negotiations on the implementation of the agreement are ongoing at the time of writing. In the case of Yakye Axa, according to Amnesty International’s information, community members are open to accept alternative lands as the only way out of their current situation. Negotiations in their case are also continuing.

On another similar case, the Inter American Court of Human Rights also ruled in favour of the Xákmok Kássek Indigenous community in August 2010. The Court established a three year deadline for Paraguay to return the ancestral land to the Xámok Kásek. At the time of writing the state had been engaged with some negotiations with the community.

Discrimination against Indigenous Peoples (Article 2 (1) and 26)

Indigenous peoples in Paraguay, as indicated above in relation to the Yakye Axa and Sawhoyamaxa, face marginalization and inequality in their access to education, health care and other basic services. Official data confirmed that Indigenous peoples suffer high levels of illiteracy and difficulties in accessing health care and basic services such as water and electricity. 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 the health situation of Indigenous Peoples makes it impossible to monitor such problems systematically, and therefore impossible to address them effectively through public policy.

Amnesty International believes that deep-rooted patterns of discrimination are perpetuated by the ongoing failure to affirm and implement Indigenous Peoples’ rights, in particular their right to develop, control and use their communal lands, territories and resources.

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Despite the fact that discrimination is prohibited under the Paraguayan Constitution (Articles 46-48), this prohibition has not been translated into any specific legislation. Paraguay does not 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 tabled in Congress in May 2007 had yet to be tabled before the plenary of the Parliament in 2011. Amnesty International considers that the Paraguayan authorities should take immediate steps to ensure prompt adoption and implementation of this law and take rigorous action to end discrimination against Indigenous peoples in Paraguay.

For further details regarding Amnesty International’s concerns in relation to shortcomings in the domestic framework to address discrimination of Indigenous peoples and the organization’s recommendations see in particular the enclosed briefing to the Committee on the Elimination of Racial Discrimination (CERD), pages 7-12.

Human rights defenders (Article 19)

Indigenous leaders and organizations, as well as those representing them and supporting their demands, are frequently 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. Amnesty International expressed concerns 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. 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.5

2. STATE OF EMERGENCY IN PARAGUAY (ARTICLE 4)

On 10 October 2011 a state of emergency was declared in the departments of San Pedro and Concepcion for 60 days. Amnesty International is concerned about the failure to adhere to the strict standards of international law requiring clear definition of the rights that would be derogated. The organisation expressed the same concern in May 2010 following a state of emergency for 30 days.6 This and the periodicity of the use of the state of emergency raise concerns about potential unlawful restrictions of Covenant rights. The use of exceptional measures as a means of maintaining security in circumstances which appear unwarranted should not set a precedent for the future unless the situation allows no other way of maintaining public order or national security. To resort to a state of emergency in order to maintain national security when the situation does not so merit would undermine the possibility of state institutions and authorities coping appropriately under normal circumstances. Amnesty International considers it necessary that the state party provides the Committee in the course of its review with full information about the impact of these states of emergency and the steps the authorities have taken to ensure that the states of emergency have been declared in line with the provisions of the Covenant.

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We hope this information will be useful for the preparation of the list of issues and would appreciate if you would make it available to all members of the Country Report Task Force for Paraguay ahead of the pre-sessional meeting.

Yours sincerely

Tania Baldwin-Pask
International Advocacy Programme

Enclosed


