



**University of Oklahoma College of Law
International Human Rights Clinic
The United States of America**

Report on the Republic of Paraguay to the 24th Session of the Universal Periodic Review, Human Rights Council, October 2015

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Executive Summary. The International Human Rights Clinic of the University of Oklahoma College of Law (IHRC-OU) (United States of America) submits the following report on the Republic of Paraguay to the 24th Session of the Universal Periodic Review, Human Rights Council. This report and attached annex concerns indigenous peoples of Paraguay and how Paraguay has implemented the recommendations received during its first review. Specifically, the report focuses on the selected areas of (I) Education; (II) Food and Agriculture; (III) Healthcare; and (IV) Land security. The purpose of this report is to provide a balanced view of indigenous concerns in Paraguay and recommend measures to address these concerns. The IHRC-OU notes the commitment expressed by Paraguay to continue to develop and improve the rights of indigenous peoples. The IHRC-OU would like to thank the government authorities and non-profit organizations committed to indigenous rights for the support and cooperation for the realization of this report.

I. Education. Normative and Institutional Frameworks: International Obligations: In 2010, the Special Rapporteur on the right to education recommended inter alia, that the Government of Paraguay should: Improve the quality of education in order to meet the objectives contained in article 29, paragraph 1, of the Convention on the Rights of the Child. To date, the government has not yet sufficiently implemented this recommendation. The education in the indigenous community Sawhoyamaxa is of very poor quality. When the children are taught, school is held under trees and the community lacks the proper teachers and materials.

Domestic Undertakings: In the 2011 Working Group Report, Paraguay supported the following recommendations: (i) Continue implementing programmes and measures to improve the enjoyment of the right to education and the right to health, including for the indigenous peoples; (ii) Take on board the concerns expressed in connection with the implementation of the right to education for all citizens; (iii) Step up efforts to improve the literacy rate among the indigenous communities and the people who live in rural areas; (iv) Continue with its literacy efforts, access to bilingual education and the promotion and protection of the Guaraní language, in all its territory; (v) Accord special attention, within its public policy on teaching, to the education of indigenous persons and children living in poverty; (vi) Pursue appropriate, efficient policies to address the access of its indigenous population to employment, medical services, education and housing. To date, Paraguay has not shown much progress with regards to the education recommendations they supported.

Human Rights on the Ground: The poor conditions and the isolated locations in which indigenous children live contribute to the education deficiency among the indigenous populations. Transportation to and from the cities' public schools is very difficult. Further, the lack of supplies and curriculum makes schooling in the indigenous communities extremely challenging. Even when supplies are provided by the government, the materials are not always in the communities' language. Nine percent of indigenous students have no materials in the official language and 70% find the provision inadequate. Ninety-one percent of indigenous people have no materials in other languages and 9% find access to such materials inadequate. Only 30% of the approximate 900 teachers working in indigenous schools have completed basic education. Only 25% of the indigenous schools have electricity and only 5% have mains water supplied from a public or private grid: most obtain water from village wells or cisterns. Only 7% have toilets with septic tanks, while 49% have latrines. Additionally, the indigenous people would like to maintain some control over what their children are taught. They also would like their own leaders in the public schools. The average period of education of the indigenous peoples is three

years while the general population is eight years, with a 40% illiteracy rate among indigenous peoples. With regards to continued education, only 1 percent of higher education scholarships were awarded to indigenous students, whereas indigenous people accounted for 15 percent of the population.

Recommendations:

- Take measures to increase accessibility to education for students in indigenous communities.
- Invest in building and renovating current schools for the indigenous population.
- Ensure adequate supplies, curriculum, and teachers are provided, in a language they can understand, to the indigenous population.
- Invest in programs to incentivize qualified educators to return to the indigenous communities to teach at primary schools.
- Take measures, with the full participation of indigenous communities, to reach a compromise allowing the indigenous communities some autonomy over the education of their children.

II. Food and Agriculture. Normative and Institutional Frameworks: International Obligations: In the 2011 UPR Working Group Report, Paraguay supported the following recommendations: (i) Ratify the Optional Protocol to the International Covenant on Economic, Social, and Cultural Rights; (ii) Intensify its efforts regarding the fight against poverty with the aim of achieving the pertinent objectives of the Millennium Development Goals. To date, unfortunately Paraguay still has not ratified the aforementioned Optional Protocol.

Domestic Undertakings: In the 2011 UPR Working Group Report, Paraguay supported the following recommendations: (i) Continue with the design and implementation of programmes fighting poverty and extreme poverty with a human rights approach to overcome structural inequality; (ii) Strengthen policy that would protect, promote and facilitate the implementation of the right to food, especially for the population who live below poverty line; (iii) Continue promoting programmes protecting the right to food, through sustainable agriculture that preserve the eco-system; (iv) Step up programmes against extreme poverty and improve the quality of life of the population; (v) Develop an action plan to address disparities in socio-economic indicators between persons belonging to indigenous communities and non-indigenous communities; (vi) Take the necessary measures to eliminate the socio-economic disparities affecting indigenous populations. To date, Paraguay has made some progress towards implementing these regulations through various ventures.

Human Rights on the Ground: The high poverty rate in Paraguay is a pervasive problem as approximately twenty-four percent of the country's population lives in poverty. For extreme poverty, the rate of indigenous peoples is sixty-three percent, six times greater than the rate for the general population. Although poverty affects both rural and urban populations, it is deeper and more severe in rural areas. Poverty affects a person's ability to afford basic living needs, such as securing proper nutrition. This shortfall can only be met with a continuous access to an adequate food supply. The poor conditions in which indigenous peoples live, in particular to their food supply scarcity, is largely a product of Paraguayan economic development. Paraguay is modestly implementing programs to combat food access disparities by providing Indigenous communities with small-scale agriculture training and food growth supplies. Inadequate government funding, lack of secured Indigenous property rights, and massive ecosystem

destruction have been curtailing these efforts. The need to resolve these obstacles is imperative to securing a safe, adequate, and continuous food supply for Indigenous peoples, in spite of positive and affirming policy measures.

Recommendations:

- Take concrete steps toward ratifying the Optional Protocol to the International Covenant on Economic, Social, and Cultural Rights.
- Ensure a clear and convincing policy at the highest level to protect, promote, and facilitate implementation of the right to food in Indigenous communities.
- Continue efforts to secure and recognize Indigenous land titles to ensure that agricultural ecosystems are not lost at the expense of expanding domestic economic development.
- Ensure funding of programs focusing on agricultural subsistence of Indigenous communities to improve the nutritional security and socioeconomic status of these areas.
- Undertake all necessary measures to implement the PRONAPI policy objectives
- Implement a culturally-sensitive business development component into current agricultural outreach programs to encourage entrepreneurial efforts of Indigenous farmers and provide skills necessary for economic prosperity.

III. Healthcare. Normative and Institutional Frameworks: International Obligations: In the 2011 UPR Working Group Report, Paraguay supported the following recommendation: (i) Implement all provisions in the Convention on the Rights of Persons with Disabilities. In 2013 the CCPR Committee, stated in its concluding observations its concern about the continuing high rates of teenage pregnancies and maternal mortality, and recommended that the State should ensure that reproductive health services are accessible to all women and girls in every region of the country. Despite the Paraguayan government's support for implementing all provisions of the Convention on the Rights of Persons with Disabilities (CRPD), no substantial effort has been put forth in order to reach these goals. There are direct provisions in the CRPD, which call for equality and non discrimination. Although these provisions in this context apply directly to those with disabilities, these violations still affect indigenous peoples with disabilities. Indigenous communities contain many members who are both elderly and disabled. The lack of access to healthcare hampering the indigenous peoples is a direct violation of certain provisions of the CRPD, and the Paraguayan government has not done enough to address these issues.

Domestic Undertakings: In the 2011 UPR Working Group Report, Paraguay supported the following recommendations: (i) Continue to make progress in the institutional consolidation of the mechanisms responsible for protecting and promoting the rights of persons with disabilities; (ii) Continue strengthening the decentralization of health-care services to increase coverage, particularly in rural areas; (iii) Designate an appropriate institution for the implementation and observance of the Convention on Rights of Persons with Disabilities; (iv) Take effective measures to reduce the high maternal mortality rate; (v) Pursue appropriate, efficient policies to address the access of its indigenous population to employment, medical services, education and housing. Despite the Paraguayan government's support of these recommendations, none were referenced by Paraguay in its responses to the UPR on May 31, 2011. During the periodical review, Paraguay unequivocally stated its support for these recommendations. They even went as far to say that some recommendations were already being implemented. However, such support is futile without direct actions undertaken by Paraguay. To date, Paraguay has shown no progress or initiative in handling these issues.

Human Rights on the Ground: The poor and isolated conditions in which rural and indigenous communities, such as Sawhoyamaxa men and women, live create an urgent and pressing need for access to healthcare. However, access to healthcare remains very limited for the indigenous peoples of Paraguay. Despite the Paraguayan government insisting that access to healthcare is a viable option for all indigenous peoples, that is simply not the case on the ground. Several communities exist without any doctors present at the community or lack a clinic. In fact, any access to healthcare requires the Sawhoyamaxa people to travel to the closest major city of Concepcion, almost 150 kilometers away. This trip is simply not feasible for emergency medical needs. There are other communities who are completely surrounded by private land and not authorized to use the roads leading out of their land. These communities must cross a river, due to the lack of access to roads, just to reach the city where they can receive health care. This trek requires several hours to complete, leaving those with urgent medical needs without an avenue for help. As recently as November 2014, 87.8% of indigenous peoples had no access to health services; this means that almost 9 in 10 indigenous persons have no access to health care. The government's contention that it is in the process of implementing measures to better provide women with better medical care related to miscarriages and abortions is also false. The limited access to health care in the indigenous communities makes it nearly impossible for indigenous women to receive the help that the government says it is providing. These circumstances have created a dire, and often fatal, healthcare problem for the indigenous peoples of Paraguay.

Recommendations:

- Take real steps towards implementation of the recommendations that Paraguay has supported about healthcare.
- Guarantee access to doctors and clinics.
- Ensure the supply of medications within the indigenous communities in order to allow them to self-treat smaller illnesses.
- Implement measures to regularly compile health statistics for indigenous communities in order to identify health care needs.

IV. Land Security, Normative and Institutional Frameworks: International Obligations: In the 2011 UPR Working Group Report, Paraguay supported the following recommendations: (i) Take measures in order to ensure the compliance with the ILO Convention No. 169 and the Declaration on the Rights of Indigenous Peoples, including the recognition of the right to land and natural resources of all indigenous peoples in Paraguay; (ii) Fully implement the rulings of the Inter-American Court of Human Rights relating to the Yakya Axa and Sawhoyamaxa communities, rendered in 2005 and 2006 respectively, which stipulate, particularly, that the lands claimed by these two communities must be restored to them. To date, the government has not effectively implemented or fulfilled the judgments of the Inter-American Court of Human Rights for the indigenous communities of Yakya Axa, Sawhoyamaxa and Xamok Kasek.

Domestic Undertakings: In the 2011 UPR Working Group Report, Paraguay supported the following recommendations: (i) Redouble efforts to resolve the problem of indigenous lands and prioritize support for the National Indigenous Institute; (ii) Strengthen its efforts for the protection of the rights of the indigenous population; (iii) Create a specific national mechanism to address any complaint by the indigenous population in relation to the use of its traditional land, and ensuring the participation of indigenous groups and their representatives; (iv) Establish an effective mechanism to address the claims of indigenous people to their traditional lands, with the appropriate participation of indigenous groups, and that resulting decisions are implemented;

(v) Develop a comprehensive and forgery-proof land registry to enable indigenous communities to hold legal titles to their ancestral land. To date, the government has not sufficiently implemented these recommendations, and the indigenous communities continue to face the same problems from 2011.

Human Rights on the Ground: Article 109 of the Constitution permitted the expropriation of land for social purposes. For instance, indigenous communities could apply for the restitution of their ancestral lands. The executive had submitted two applications for expropriation on behalf of the Yakye Axa, Xákmok Kásek and Sawhoyamaxa communities, but the applications had been turned down by the National Congress. The State's sole remaining option was to purchase the land with public funds. The budget for the purpose had been increased from US\$ 4 million to US\$ 22 million. In August 2010 the National Institute of Indigenous Affairs had adopted resolution No. 2039 establishing the obligation to request its involvement in all consultations with indigenous communities. According to the resolution, the Institute had received complaints of interference by public and private bodies in such consultations and of frequent non-compliance with the formalities and requirements laid down in the International Labour Organization (ILO) Convention concerning Indigenous and Tribal Peoples in Independent Countries (No. 169). The resolution required that consultations should be conducted on a prior, free and informed basis and in good faith with a view to achieving guaranteed consent. Some indigenous organizations considered that the consultations should be regulated by law and were currently submitting proposals for a protocol concerning consultation and consent procedures with the indigenous peoples of Paraguay.

Recommendations:

- Effectively implement and enforce the judgments of the Inter-American Court of Human Rights for the indigenous communities of Yakye Axa, Sawhoyamaxa and Xamok Kasek.
- Protect the indigenous communities from harassment and threats of expulsion from their lands by creating legislation that is consistent with ILO Convention No. 169
- Provide the indigenous communities with equal rights, including but not limited to proper education and healthcare on their lands to provide the peoples further stability.
- Encourage the participation of indigenous individuals in the different branches of government.
- Take concrete steps to approve expropriations requested by indigenous communities for the restitution of its ancestral land.
- Continue working with INDI to increase the budget for land acquisitions in close coordination with the indigenous communities.