

'WE'RE ONLY ASKING FOR WHAT IS OURS'

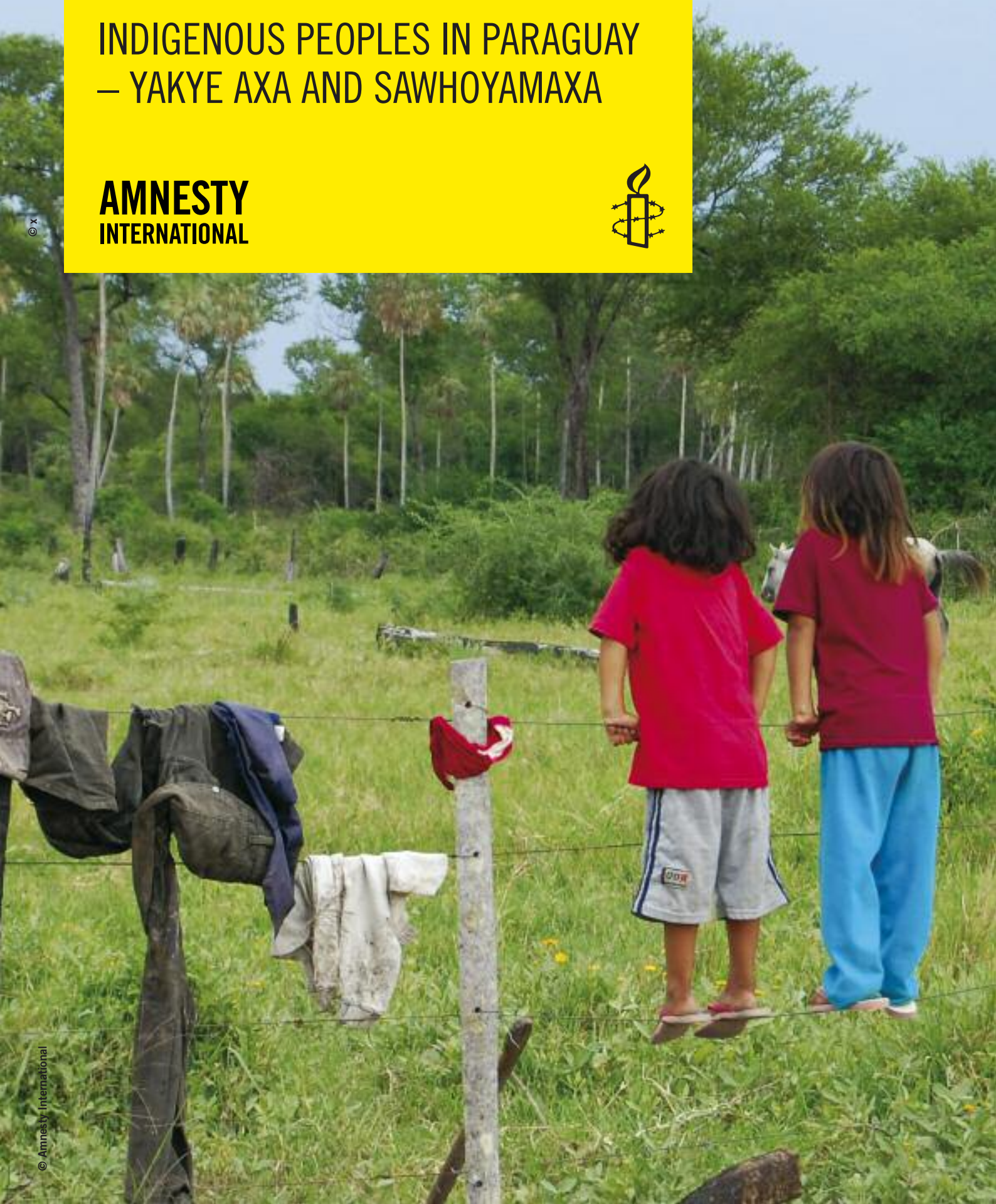
INDIGENOUS PEOPLES IN PARAGUAY
— YAKYE AXA AND SAWHOYAMAXA

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INDIGENOUS PEOPLES IN PARAGUAY

Historically, Paraguay's Indigenous Peoples have been marginalized and subjected to grave and systematic abuses. A Truth and Justice Commission, which investigated abuses committed during the military dictatorship of General Stroessner (1954-1989) and the transition to democracy, documented a series of violations, including extrajudicial executions, slavery, sexual violence and the sale of children. It also highlighted how these violations have hindered the rights of Indigenous Peoples to land and self-determination.

'THE COWS LIVE IN BETTER CONDITION THAN INDIGENOUS PEOPLES. THEY ARE VACCINATED BETTER.'

Jorge Lara Castro, Deputy Foreign Minister,
December 2008

The Commission found that although 20 years had passed since the end of the dictatorship, human rights violations against Indigenous Peoples continue to occur, permanently affecting their life chances, culture and land rights. The effects of what the United Nations Development Programme has described as "accumulated exclusions" are plain to see. Levels of poverty and illiteracy are significantly higher among Indigenous Peoples compared to the rest of the Paraguayan 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. Official figures suggest there are around 108,600 Indigenous people in Paraguay – 1.7 per cent of the population – although this is likely to be a significant underestimate of the true figure. The Paraguayan Constitution recognizes the right of Indigenous Peoples to hold communal property and requires the

state to provide such lands to them free of charge. Internationally, Paraguay has supported the adoption of the UN Declaration on the Rights of Indigenous Peoples. Nevertheless, the last Census of Indigenous Peoples in 2002 calculated that 45 per cent of Paraguay's Indigenous Peoples did not enjoy definitive legal ownership of their land.

According to the national Co-ordinator for the Self-determination of Indigenous Peoples, there are three main reasons why the rights enshrined in the Constitution are not reflected in the reality on the ground: slowness in processing Indigenous land claims; alleged lack of funds to buy back traditional lands; and irreparable damage to traditional lands that has displaced Indigenous Peoples.

The Yakye Axa and Sawhoyamaxa belong to the Enxet ethnic group of Indigenous Peoples. For years they have been forced to live in temporary homes alongside the Pozo Colorado-Concepción highway because their traditional lands are in the hands of private owners. Denied access to their lands, the Yakye Axa and Sawhoyamaxa have been unable to sustain their traditional activities – such as hunting, fishing and gathering honey – or their cultural and spiritual practices. At the same time, the lack of work in the area means that they have been forced to rely increasingly on aid from state agencies and private institutions for food.

The Yakye Axa and Sawhoyamaxa lodged separate claims to the land to which they have the greatest attachment – a fraction of what they consider to be their traditional territory. However, more than 10 years later, after exhausting all available administrative processes without success and desperate to return to their lands, they decided to take



Above: Yakye Axa and Sawhoyamaxa demonstration to demand the return of their ancestral land.

Cover: Yakye Axa children look at their ancestral land. A wire fence and years of injustice prevent them from entering.

their two cases, with the help of NGOs Tierraviva and CEJIL, to the Inter-American Commission on Human Rights and then to the Inter-American Court of Human Rights.

In 2005 and 2006, in separate rulings, the Inter-American Court found that the rights of the Yakye Axa and Sawhoyamaxa to judicial protection, to property, and to life had been violated. The Indigenous



'WE DON'T WANT TO TOUCH THEIR LANDS; ALL WE WANT IS WHAT IS OURS'

Venancio Flores, Yakye Axa, November 2008



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"These [Indigenous] lands from now on will be sacred not only for their culture... but also sacred in the application of the law... No white person who negotiates indigenous lands... will enjoy the same impunity that they have in the past."

President Fernando Lugo's inaugural speech, 15 August 2008

In August 2008, Fernando Lugo, a former bishop, was sworn in as president, breaking 61 years of one-party rule in Paraguay. During his campaign, he promised widespread structural, social and cultural changes, not least on issues relating to land reform.

'IN THE PARAGUAYAN STATE THERE IS A LACK OF SENSITIVITY AND ALSO GREAT IGNORANCE ABOUT WHAT INDIGENOUS PEOPLES' RIGHTS ARE... THERE IS AN IDEA THAT IS NOT ONLY EXAGGERATED BUT ACTUALLY FALSE ABOUT WHAT THE RIGHT TO PRIVATE PROPERTY IS. THAT IS, THAT THE PURCHASE OF LANDS DOES NOT LEGITIMIZE THEIR OWNERSHIP WHEN THESE LANDS HAVE INDIGENOUS INHABITANTS.'

Padre Bartolomeu Meliá, December 2008

communities' claims to their traditional land were vindicated under international law. However, the failure of the Paraguayan authorities to comply fully with the Inter-American Court's orders means that the judgements have made little difference in practice to the lives of the Yakye Axa and Sawhoyamaxa.

"As long as the Community remains landless, given its special state of vulnerability and the impossibility of resorting to traditional subsistence mechanisms, the State must supply, immediately and on a regular basis... water, regular medical care and appropriate medicine, food in quantities, variety and quality that are sufficient... to have

minimum conditions for a decent life, latrines or appropriate toilets, bilingual material for appropriate education".

Inter-American Court judgement, *Yakye Axa v Paraguay*, 17 June 2005

The Yakye Axa and Sawhoyamaxa, determined to return to their lands, have united to exert pressure on the Paraguayan government and in November 2008 called on Amnesty International to support their own campaigning efforts. In a series of participatory workshops, facilitated by local NGO Tierraviva, members of both Indigenous communities told their stories, expressed their concerns and set out their priorities for action. The following pages are based on these interviews and workshops.



YAKYE AXA

The Yakye Axa (Island of Palms) Indigenous community belongs to the Southern Lengua Enxet Peoples. For more than 10 years, around 90 families have lived alongside the Pozo Colorado-Concepción highway. Their “home” has been a narrow strip of barren land between the road and a low wire fence that demarcates the edge of a large cattle ranch that has absorbed their traditional lands. The community suffered years of exploitation working on the private estates which have taken over their land.

In 1993, the Yakye Axa began the process of reclaiming a limited area of their traditional lands, using local administrative

procedures. The 15,963 hectares of land claimed has since been identified through the official administrative process of the Paraguayan Institute of Indigenous Peoples (Instituto Paraguayo del Indígena, INDI), anthropological studies and the customs and traditions of the Yakye Axa.

In 1996, the Yakye Axa tried to return to their traditional land while awaiting the decision on their land claim. However, they were blocked from entering the land. Living conditions beside the Pozo Colorado-Concepción highway are harsh and precarious with irregular water and food supplies and inadequate medical care. In recent years there have been at least eight preventable deaths in the community.

‘THERE WAS NO TIME TO CALL AN AMBULANCE, WE HAD NO WAY TO TAKE HER THERE OURSELVES AND THE BUSES DON’T WANT SICK PEOPLE TO BOARD.’

Innocencia Gómez, a community health promoter, speaking about the death in childbirth of Dominga Fernández, a 42-year-old mother of 10 who died following a haemorrhage; the child died a year later after suffering from diarrhoea for five months.

Balbina Torales described how she had become ill seven months into her pregnancy. She had gone to the hospital for one ante-natal check-up, but could not afford to go back to the city to get the results of the tests. Fellow community members, including the health promoter,



**'THE DESTITUTE LIVING CONDITIONS
OF THE MEMBERS OF THE YAKYE AXA
COMMUNITY WHO HAVE SETTLED ALONGSIDE
THE PUBLIC ROAD ARE EXTREME'**

Inter-American Court of Human Rights, 17 June 2005

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visited her but were unable to help and her child was stillborn. Shortly after she gave birth, a health team arrived on one of its monthly rounds and promised to send an ambulance; this took two days to arrive. After several days in hospital on a drip, Balbina Torales recovered. She has had five children; only two survive.

Since the Inter-American Court ruling on the Yakye Axa case in 2005 highlighted the ineffectiveness of the procedures available for land claims, the INDI has attempted to secure the Indigenous community's traditional land from those who currently hold the land title. But these have refused to recognize the Yakye Axa's right over the land and the Paraguayan authorities have so far failed to restore the land to them,

thereby missing the 13 July 2008 deadline established in the ruling.

After sustained campaigning by the Yakye Axa, President Lugo signed a bill on 20 November 2008 declaring the 15,963 hectares of land claimed by Yakye Axa "of social interest" and ordering that it be expropriated from the current owner in favour of the INDI and then restored to the Yakye Axa. Five days later, the bill was tabled with four Senate commissions and was due to be discussed in the session beginning in March 2009. However, there were concerns that delays and opposition in Congress could thwart the process.

The Yakye Axa are united in their demand that respect for their claim to their

Left: A road sign marks the temporary "home" to 90 Yakye Axa families.

Above: Members of the Yakye Axa.

traditional lands is a priority, as is the community development fund ordered by the Inter-American Court to enable them to re-establish their traditional livelihoods on their land. Despite the hardships and official indifference over such a long period, the Yakye Axa continue their long and determined struggle for justice.

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'THIS IS DOING US A LOT OF HARM BECAUSE LIVING CONDITIONS HERE ON THE ROADSIDE ARE VERY HARD. WE LIVE BADLY, WE ARE LOSING OUR LANGUAGE AND THIS AFFECTS THE CHILDREN MOST. THEY LEARN MANY BAD THINGS LIVING ON THE ROADSIDE BECAUSE IT IS PUBLIC.'

José González, Sawhoyamaxa, November 2008



'[T]HE OF IND WITH T BE AC UNDER FUNDA THEIR LIFE, V SURVI AND T FUTUR

Inter-American judgement

'WHEN WE ARRIVE AT THE HOSPITAL THEY ALWAYS ASK "WHERE ARE YOU FROM". IF YOU SAY YOU ARE FROM AN INDIGENOUS COMMUNITY, THAT'S WHEN THE PROBLEMS START.'

Balbina Torales, Yakye Axa, November 2008

Yakye Axa and Sawhoyamaxa set out their concerns in Amnesty International workshops facilitated by Tierraviva.





'EDUCATION IS IMPORTANT SO THAT OUR CHILDREN CAN LEARN SKILLS, USE THE INTERNET, HAVE ACCESS TO THE SAME OPPORTUNITIES AS PARAGUAYANS, SO THEY STOP SAYING THAT THE INDIGENOUS PEOPLE ARE STUPID AND IGNORANT.'

Florentin Jara, Sawhoyamaza, November 2008

'CLOSE RELATIONSHIP BETWEEN INDIGENOUS PEOPLES AND THE LAND MUST BE RECOGNIZED AND UNDERSTOOD AS THE CULTURAL BASIS FOR THEIR IDENTITY, CULTURE, SPIRITUAL WHOLENESS, ECONOMIC SURVIVAL, AND PRESERVATION OF KNOWLEDGE TRANSMISSION TO FUTURE GENERATIONS.'

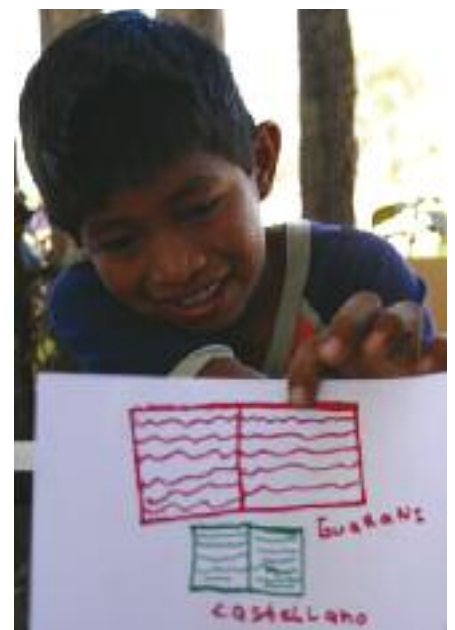
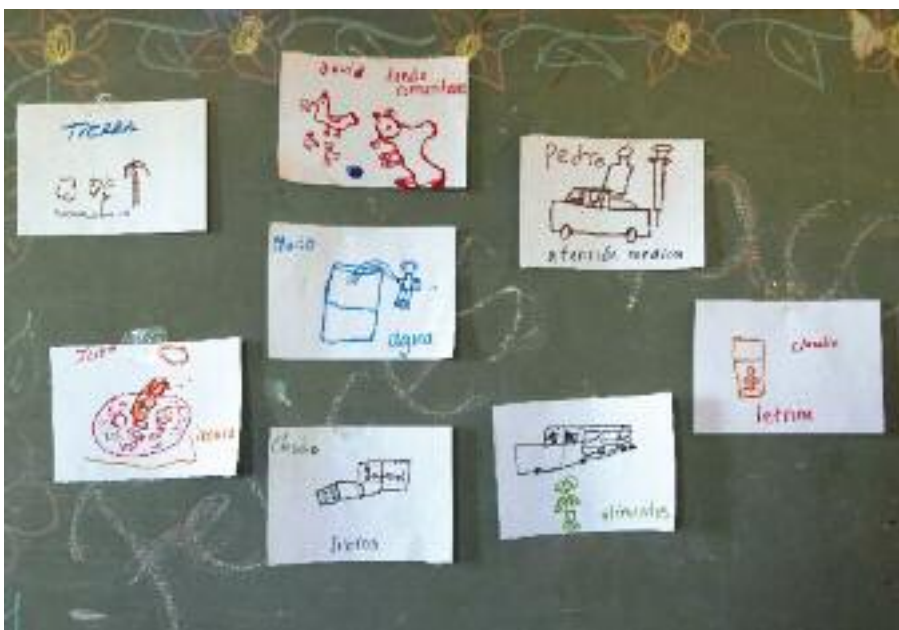
Inter-American Court of Human Rights, Yakye Axa and Sawhoyamaza, June 2005



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SAWHOYAMAXA

Sawhoyamaya means “from the place where the coconuts have run out”. The Indigenous Peoples of Sawhoyamaya belong to the South Enxet and North Enhlet Lengua Peoples. Their traditional land is in an area on the eastern edge of the Chaco region. Since it has been in the hands of private owners significant areas have been deforested and turned into grazing pastures.

By the mid 1970s, many Sawhoyamaya families were dispersed to around seven different estates where many were mistreated and exploited. In 1991, the Sawhoyamaya initiated procedures to gain legal recognition of their rights over a portion of their traditional lands that forms part of the Loma Porã Estate.

After the land claim was lodged, conditions worsened for many members of the Sawhoyamaya working on estates. As a result, they began to settle primarily in two locations – Kilómetro 16 and Santa Elisa – approximately 15km apart, alongside the Pozo Colorado-Concepción highway where they remain. There are now between 400 and 500 people living in these two sites.

There is a strong desire among the Sawhoyamaya to reunite on their traditional land. In 2006, 15 years after they lodged their land claim, the Inter-American Court issued its judgement in their favour, ordering, among other things, the return of the Sawhoyamaya's traditional lands. Many members expressed their frustration that prolonged efforts to reclaim their land using all available measures

'THE LAW IS IN OUR FAVOUR, BUT IT IS NOT COMPLIED WITH...IT IS ONLY RECOGNIZED ON PAPER.'

José González, Sawhoyamaya, November 2008

had thus far achieved no real change, even after the ruling of the Inter-American Court.

Living beside the road has changed the character of the Sawhoyamaya community and threatens many aspects of traditional culture. For example, opportunities for hunting are scarce, because of lack of access to traditional lands and because of changes to the land brought about by the ranches. As a result, people now tend to hunt for themselves rather than sharing what they catch with others. Many traditional crafts have almost vanished. In particular, many members of the Sawhoyamaya



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'WE USED TO LIVE WELL ON THE LAND, THERE WERE NO FENCES AND PEOPLE COULD MOVE AROUND WITHOUT ANY DIFFICULTY.'

Belén Galarza, Sawhoyamaxa, November 2008

community voiced their concerns about the situation of the young people. Unemployment rates are high and there are few educational opportunities. José González, a teacher, explained that children were unable to continue their education beyond the age of 14.

Some steps have been taken by the authorities to comply with the Inter-American Court ruling. For example, water tanks have been installed and there have been food deliveries. However, these have been sporadic and irregular and fall far short of full compliance with the judgement. Although some people said that they had had some positive experiences in getting medical attention in Concepción and in accessing help to pay for medicines, these experiences were the exception. The reality for most of the

Sawhoyamaxa is woefully inadequate health care, especially in emergencies. Each preventable death is a human tragedy, but taken together they speak volumes about the very real risks to the Indigenous community caused by discrimination, deprivation and the failure of the authorities to act. Between December 2008 and January 2009, six died, among them four children under the age of two – Maximiliano Montaña Chávez, Susana Marecos, Rodrigo Marecos and NN [not yet named] García Martínez. All the children died after suffering from diarrhoea and vomiting.

The Sawhoyamaxa are adamant that resolution of their land claim is critical. Access to their traditional lands and way of life holds out the hope of a future where they will no longer be dependent on aid from the state. The desire to

Left: Belén Galarza outside her home where she lives with 10 family members.

Above: A truck hurtles past Sawhoyamaxa homes, metres away from playing children.

be reunited after years of dispersal and fragmentation was deeply felt and widespread. For this to be realized, their land claim must be resolved promptly and in full.

The 19 May 2009 deadline for Paraguay to comply with the order of the Inter-American Court is fast approaching. To date the authorities appear to have no clear plan for making the return of the Sawhoyamaxa to their traditional land a reality and they have shown no sign that they intend to involve the Sawhoyamaxa in the process.

'WE ARE ONLY DEMANDING OUR LAND'

The survival of both the Yakye Axa and Sawhoyamaxa remains in jeopardy until the judgements of the Inter-American Court of Human Rights are fully implemented and the question of land rights is crucial to this. Both Indigenous communities expressed their eagerness to once again become self-sufficient. However, the Inter-American Court recognized that, until their land is reinstated, certain measures were essential to meet the immediate basic needs of the communities, especially in terms of food, water and health care. The conditions in which both communities are condemned to live show clearly how far the authorities are from fulfilling even these interim requirements.

The deplorable situation of the Yakye Axa and Sawhoyamaxa is one that is mirrored in other Indigenous Peoples in different parts of the country. State neglect and the negative impact of tensions between private and communal land ownership are a common thread running through the lives of Indigenous Peoples of many varied cultures and identities in Paraguay. Hopes for resolution of their land claims have been raised by the new government, yet so far remain unfulfilled. Broad, nationwide reforms, in line with the UN Declaration on the Rights of Indigenous Peoples, that benefit all of Paraguay's Indigenous Peoples, are urgently needed.

Above: (From left to right) Paulina, Belén and her granddaughter and Gladys: four generations of the same family.

Above right: The Sawhoyamaxa school remains in a precarious state months after a storm blew off its roof.



LAND RIGHTS

'WE DON'T WANT TO TOUCH THE LAND OF THE PARAGUAYAN CATTLE RANCHERS, WE'RE ONLY DEMANDING OUR LAND, THE LAND WHERE OUR GRANDPARENTS WERE BORN AND BURIED, WHERE WE WERE BORN.'

Venancio Flores, Yakye Axa, November 2008

The Inter-American Court, in line with international law, ordered Paraguay to return the land claimed by the Yakye Axa and Sawhoyamaxa. It gave the authorities three years to achieve this. In the case of the Yakye Axa, the deadline expired on 13 July 2008. For the Sawhoyamaxa, the deadline expires on 19 May 2009.

The Court also required the authorities to make available any funds needed to purchase the land from the current owners and to set up community development funds to help the Yakye Axa and Sawhoyamaxa re-establish themselves once the land has been returned. To date, it is far from clear that the Paraguayan government has allocated resources to implement the judgements.

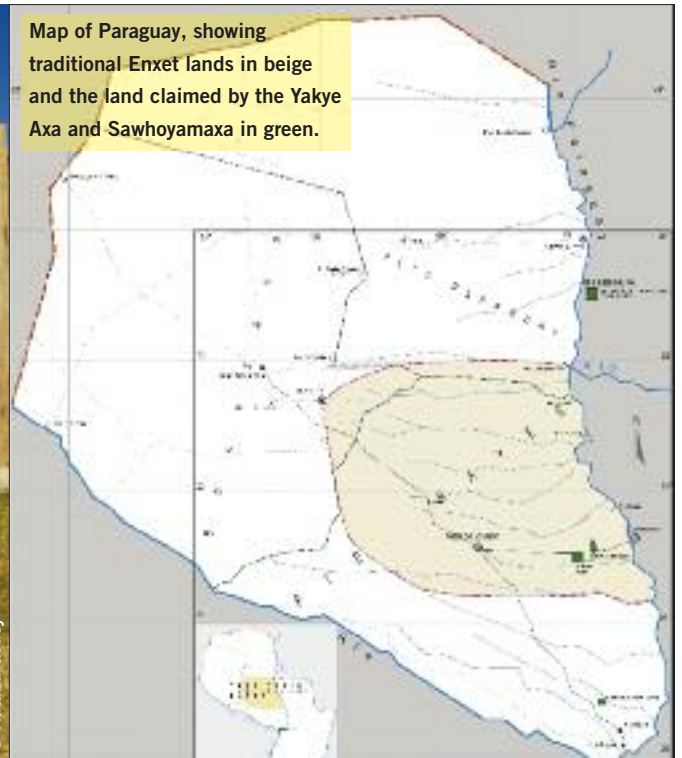
RIGHT TO HEALTH

'TO GET AMBULANCES TO COME WE NEED MONEY... IF WE DON'T HAVE SUCH MONEY HOW ARE WE GOING TO MOVE OUR SICK PEOPLE? WE CAN'T.'

Mariana Ayala, Sawhoyamaxa, November 2008

Neither the Yakye Axa nor Sawhoyamaxa has a health clinic or special transport to take people to the nearest medical facilities in the nearby town of Concepción. 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 preventive medical care. The Court called on the authorities to provide regular medical care and appropriate medicines. Despite this, preventable deaths among the Yakye Axa and Sawhoyamaxa continue; more than 27 deaths have been reported since the judgements were issued in 2005 and 2006.

An agreement has now been reached with the authorities in Concepción for health care to be provided locally, so that members of the Indigenous communities do not have to travel over 200km to the capital of the Presidente



Map of Paraguay, showing traditional Enxet lands in beige and the land claimed by the Yakye Axa and Sawhoyamaxa in green.

Hayes Department, where they are technically registered for health services. Nevertheless, access to emergency services and free medicines remains inadequate and local volunteer health promoters lack adequate training and materials. Even the local regional hospital authorities acknowledged, when Amnesty International spoke to them in November 2008, that the care provided is not adequate.

The Inter-American Court ordered Paraguay to provide latrines or sanitation facilities and regular clean water supplies. Although some efforts have been made, provision of clean water and sanitation remains inadequate. A local official responsible for deliveries, for example, saw his actions as doing the Yakye Axa and Sawhoyamaxa “a little favour”. As a result, both communities have had to resort to using contaminated water on nearby land. Although some latrines were provided, the failure to provide information and training on how to maintain them means that many have had to be abandoned.

RIGHT TO FOOD

The Inter-American Court also ordered the regular supply of food of sufficient quality and quantity to the Yakye Axa and Sawhoyamaxa to ensure that they have the minimum conditions for a decent life. However, food supplies from the National Secretariat for Emergencies come irregularly and without forewarning. Both Indigenous communities reported receiving no food supplies between November 2008 and February 2009.

‘[W]E ARE PRACTICALLY GOING TO LOSE OUR LANGUAGE, WE CAN’T COMMUNICATE BETWEEN OURSELVES ANY MORE NOR WITH ANY OTHER [ENXET] COMMUNITY.’

José González, Sawhoyamaxa, November 2008

RIGHT TO EDUCATION

Inadequate infrastructure and inappropriate curriculums have created obstacles for Yakye Axa and Sawhoyamaxa children in accessing their right to education. Investment in infrastructure has been wholly inadequate. For example, in Kilómetro 16, the roof of the school blown off in a storm several months earlier had still not been repaired.

Many adults and children now speak Guaraní. Enxet, the traditional language, is increasingly confined to the older generation. The Inter-American Court ordered that bilingual materials be provided to the Yakye Axa and that material and human resources be made available to the Sawhoyamaxa. However, the lack of infrastructure and shortage of teachers has hindered the implementation of these measures. Both the Yakye Axa and Sawhoyamaxa expressed a strong desire to receive education that enables them to develop within their culture and recover their traditional language.



Representatives of the Yakye Axa and Sawhoyamaxa taking part in the World Social Forum, Belém, Brazil, February 2009.

'THE FIRST THING I WILL TELL MY COMMUNITY WHEN I GET HOME WILL BE THAT MANY MEN AND WOMEN FROM ALL PARTS OF THE WORLD PARTICIPATED IN ACTIVITIES WHERE WE HAD THE OPPORTUNITY TO TELL OUR CASE AND ABOUT OUR STRUGGLES, AND THEY ALL SUPPORTED US.'

Gladys Benites, member of the community of Sawhoyamaxa

'WE ARE LIVING IN PARAGUAY... FOR 20 YEARS WE HAVE BEEN STRUGGLING TO RECOVER OUR ANCESTRAL LAND. THAT'S WHY WE'RE LIVING ON THE SIDE OF THE ROAD AND OUR LIVING CONDITIONS ARE SO PRECARIOUS. WE WOULD LIKE YOU TO SHOW YOUR SOLIDARITY WITH US.'

José González, Sawhoyamaxa, November 2008

TAKE ACTION NOW

Please write to the Paraguayan authorities, calling on them to:

- undertake without further delay all action necessary to comply fully with the two judgements of the Inter-American Court of Human Rights, in particular immediate restitution of the traditional lands to the Yakye Axa and Sawhoyamaxa communities;
- ensure that sufficient resources are set aside for the community development fund;
- ensure that, until these traditional lands are returned, co-ordinated steps are taken to comply fully with measures to ensure the Indigenous communities' survival, in particular the regular provision of food, adequate medical care and clean drinking water, and access to education;

- ensure the participation of the Yakye Axa and Sawhoyamaxa communities and their representatives in all plans and decisions affecting the communities and their free, prior and informed consent before implementation.

Please send your appeals to:

Dr Fernando Armino Lugo Méndez
Presidente de la República del Paraguay
Palacio de los López, Asunción, Paraguay
Salutation: Dear President/Estimado Presidente

Inter-Institutional Commission
José Enrique García Ávalos
Procurador General de la República del Paraguay
Procuraduría General de la República
José Berges 1007 c/Perú
Asunción, Paraguay
Salutation: Dear Procurator General/
Estimado Señor Procurador General

Please also write to the Presidents of the two Chambers of Congress, calling for the approval without further delay of the bill on the expropriation of the traditional lands of the Yakye Axa submitted by President Fernando Lugo in November 2008.

President of the Honourable Chamber of Senators
Sen. Enrique González Quintana
14 de Mayo y Avda. República
Asunción, Paraguay
Salutation: Dear President of the Chamber of Senators/Estimado Presidente de la Cámara de Senadores

President of the Honourable Chamber of Deputies
Dip. Nac. Enrique S. Buzarquis Cáceres
14 de Mayo y Avda. República
Asunción, Paraguay
Salutation: Dear President of the Chamber of Deputies/Estimado Presidente de la Cámara de Diputados

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