

COORDINADORA POR LA AUTODETERMINACIÓN DE LOS PUEBLOS INDÍGENAS.

CAPI

Víctor Haedo 1023 c/ Colón , email:organizacion_capi@hotmail.com
Asunción, Paraguay

Telefax: 595.21.443464

Wan-Hea Lee
Secretary, United Nations Committee on Economic, Social and Cultural Rights
Office of the UN High Commissioner for Human Rights
UNOG-OHCHR
1211 Geneva
Switzerland
tel. 41.22.917.9154
fax. 41.22.917.9022

***Re: Paraguay: Report of the Indigenous NGO, CAPI, to the
CESCR for its 39th period of sessions from November 5-23, 2007***

Dear Secretary Lee:

We take advantage of this opportunity to send you our sincere greetings and to submit in English and Spanish, via electronic email, the “Report of the *Coordinadora por la Autodeterminación de los Pueblos Indígenas* regarding the compliance of Paraguay with the International Covenant on Economic, Social and Cultural Rights for consideration during its 39th period of sessions to be carried out between November 5 and 23 of 2007.”

Today we have overnighted to you 25 copies of this document to be sent and distributed promptly to the members of the Committee. We understand that this document will be made public on the Committee’s website related to this session.

We thank you for the special attention that you will give to our communication and the attention that this Committee dedicates to this document and the rights of the world’s Indigenous People. If you need additional consultation or information, please do not hesitate to contact the CAPI at organización_capi@hotmail.com and/or at 595.981.756116 and telefax 595.21.442464.

Hipolito Aceves
President

Carlos Picanerai
Secretary

Report of the
COORDINADORA POR LA AUTODETERMINACIÓN DE
LOS PUEBLOS INDÍGENAS

C.A.P.I

**regarding the compliance of Paraguay with the International
Covenant on Economic, Social and Cultural Rights (ICESCR)
for consideration during its 39th period of sessions to be
convened between November 5 and 23 of 2007**

October 2007

(original in Spanish)

MEMBERS OF CAPI

- **Eastern Region:**

Asociación Teko Yma Jee'a Pavë – San Juan de Nepomuceno, Ava'i y Tava'i - Caazapa
Asociación Che Irö Ara Poty – Campo 9 - Caaguazú
Asociación de Comunidades Indígenas de Itapúa-ACIDI
Asociación Ava Guaraní Alto Canindeyu
Asociación Pa'i Reko Pavë (Capitán Bado –Amambay)
Asociación de Comunidades Indígenas Guaraní de Alto Paraná
Asociación de Maestros Indígenas de Caaguazu.

- **Western Region - Chaco**

Coordinadora de Líderes Indígenas del Bajo Chaco (CLIBCH)
Organización del Pueblo Enlhet Norte (Boquerón)
Federación Indígena del Chaco Central-FRICC (parte de Pte. Hayes y Boquerón)
Unión Nativo Ayoreo del Paraguay-UNAP (Boquerón y Alto Paraguay)
Comisión de Pueblos y Comunidades Indígenas del Chaco Paraguay-CPI Chaco Py.
Organización Payipie Ichadie Totobiegosode-OPIT (Alto Paraguay)
Asociación Angaite de Desarrollo Comunitario.

I. INTRODUCTION

1. This report arises from the joint efforts of the fourteen (14) member organizations of the *Cordinadora por la Autodeterminación de los Pueblos Indígenas (CAPI)* representing more than 248 indigenous communities of the eastern and western regions of Paraguay.
2. It is the opinion of CAPI and its members that the lack of adequate action by the Paraguayan State represents non-compliance with its duties under the International Covenant on Economic, Social and Cultural Rights (the “Covenant”), which has produced a series of violations of the rights of the Indigenous Peoples of Paraguay. These violations have caused and are causing a profound suffering of hunger, sickness, and threats to the physical, cultural and territorial integrity of these communities. In particular, the situation of extreme poverty of the Indigenous Peoples is reflected in the lack of the legalization of their traditional territory that belongs to them and are guaranteed by national law and the Covenant.

II. ORGANIZATION OF THE REPORT

3. CAPI submits this report taking into consideration the Report of the State of Paraguay to the Committee on Economic, Social and Cultural Rights (the “Committee” or “CESCR”) dated 26 February 2007 (E/C.12/PRY/3) (“State’s Report”), the “Lists of Questions that should be addressed upon examining the second, third and fourth periodic reports of Paraguay regarding the rights articulated in articles 1 through 15 of the Covenant” dated 14 May 2007 and 14 September 2007 (E/C.12/PRY/Q/3) (“Committee’s List of Questions (May)” and “Committee’s List de Questions (September)”), and the alternative reports of other NGOs. This report offers commentaries regarding the latest list of questions put forward by the Committee on 14 September; observations and commentaries to certain sections and declarations of the State’s Report; and several recommendations to guide the discussion between the Committee and the delegation of Paraguay during its 39th period of sessions that will be realized in November of this year. This report focuses on Paraguay’s implementation of the rights pronounced in articles 1, 2, 11, 12, 13, and 15 of the Covenant.
4. As the brevity of this report does not permit extensive treatment of each of the issues and themes of interest to CAPI and its members in the context of

Paraguay's implementation of the Covenant, more than anything the objective of this report is to inform the Committee about the most adverse impacts to Indigenous Peoples arising from the slow response on the part of the State to address their territorial claims and the lack of possession of their ancestral lands and natural resources. These impacts include extensive deforestation and desertification of their lands, the loss of their sacred sites, their means of subsistence and traditional medicines, the death of their members because of the lack of water; the absence of protections for their family members living in voluntary isolation, and the incidents of forced evictions of communities.

5. Furthermore, CAPI describes the incidents of the abandonment of the State of its responsibility to provide adequate health services and education to said peoples; the undue presence and actions of missionaries that are detrimental to the spirituality and religious beliefs of their people; and the carrying out and imposition of projects in their ancestral lands (particularly related to conservation) without any prior consultation and without the consent of the affected peoples. With respect to the latter, CAPI notes the role played by other actors such as the Inter-American Development Bank, the United Nations Development Programme ("UNDP") and the Global Environmental Facility ("GEF").

III. OBSERVATION ABOUT RELEVANT ARTICLES

ARTICLE 1

6. *CAPI would like to reiterate the importance of the Committee's request to the State, consistent with its obligations under article 1, that it provide information about "the actions taken to return the ancestral lands to the indigenous communities."* (See paragraph 4 of the Committee's List of Questions (September). The principle reason for the hunger, the malnutrition, the loss of indigenous identity and culture as well as the deprivation of their rights is related to the grave problem of access to their ancestral and traditional lands.
7. The Right to Ancestral Lands: It is notable that in its report of 206 pages, the State does not provide any significant information about the situation of the possession of indigenous lands other than some information in Annex III about the lands acquired by the Paraguay's Indigenous Institute (INDI) for indigenous community settlements. In fact, the results of the national census

indicate that there exist 412 indigenous communities in Paraguay, of which 185, 45% of the total, still have no definitive legal security, such as that provided for in the National Constitution, which in its Chapter V, article 64, recognizes “communal property rights to land which will be sufficient both in terms of size and quality for them to preserve and to develop their particular forms of living” and requires that the “State will provide them with the respective land, free of charge, which will be exempt from attachments, cannot be divided, transferred, or affected by the statute of limitations, nor can it be used as collateral for contractual obligations or to be leased...” *In spite of these constitutional guarantees, the ancestral lands of the indigenous peoples of Paraguay continue to be threatened by:*

- a. The slow processing by the State of indigenous peoples’ land claims,*
 - b. the alleged lack of funds to buy ancestral lands that are in the hands of third parties and other private parties who largely possess titles to these lands,*
 - c. the irreparable damages caused by the cattle raising and agro-industry undertakings in the area (the majority with the approval of the State which has resulted in the displacement of indigenous groups from their ancestral lands and traditional farming).*
8. The member organizations of CAPI generally share the same concerns regarding the lack of land tenure security related to the ancestral lands of the indigenous communities they represent.
- a. Various communities have titles to some parcels that are part of their ancestral lands, but they still lack legal recognition from other official and non-official actors over the same which are necessary for the development of “their particular forms of living” as guaranteed by the National Constitution of Paraguay. For example,*
 - between 20-30 families of the Ava Guaraní people of the Canindenyu Department currently occupy 64 hectares but do not have any forests.
 - The Totobiegosode Ayoreo have title to only less than 20% de their claimed ancestral lands.
 - In the Caaguazú Department, some Mby’a Guarani communities have only secured 400 hectares of the 1000 hectares claimed.
 - In the Departments of Boquerón and Presidente Hayes, the Federación Regional Indígena del Chaco Central informs that all

of the communities that form this association have their own land, all are legalized, but only several in sufficient size while others not.

- And la Comisión de Pueblos y Comunidades Indígenas del Chaco Paraguayo (“CPI Chaco-Py”) reports that some of the communities have their own land in sufficient size and quality, but others do not have land and have begun proceedings for their legalization.

b. *Others have a Government promise to secure their claimed lands, but they are still waiting for the completion of proceedings to possess the titles. Others have land promised, but the State has not paid the private landowners or only have partially paid.* For example,

- in the Itapúa Department, the land claims of 11 communities have been ongoing for a number of years:

- some claims have been going on for more than 10 years;
- another three communities only need INDI to transfer their property titles,
- one of these was expropriated by the State but has not yet been paid for (year 2002),
- and seven continue their struggle before distinct authorities.

- CPI Chaco, working with communities living in the Boquerón, Presidente de Hayes and Alto Paraguay Departments, reports to CAPI that the small amount of land that the State has acquired continues, as a result of beaurocracy, to be titled in the name of INDI.

c. *The majority has pending land claims before the State and various of these have been before administrative processes for numerous years without result.* For example,

- The Coordinadora de Líderes Indígenas del Bajo Chaco (CLIBCH) explains that because of these delays, the indigenous community of Sawhoyamaxa and Yakye Axa (of the Pueblo Enxet) Communities brought their claims to the Inter-American Court of Human Rights and have won a favorable decision providing reparations to the violations of their fundamental rights. Nevertheless, Paraguay’s implementation of this decision is still pending.

- Also, the Asociación de Comunidades Indígenas Guaraní de Alto Paraguay indicates that 80% of the lands of their member communities are titled and some six territorial claims are currently in proceedings before very slow-moving processes.

d. *All fear the repeated explanations of the State that there exists in the National Budget none of the necessary funds to expropriate and/or buy the traditional lands that remain in the hands of non-indigenous and private land owners. This has generated an unknown and tragic situation in which the same Indigenous Peoples, victims of State non-compliance, are looking for money from international cooperation to be able to buy their own ancestral lands from the holders of the property titles.*

e. *Many have knowledge about projects that the State is currently carrying out in the ancestral lands of the Indigenous Peoples, without the State sharing information about the same nor consulting previously with them as required by the National Law, and on top of this, without seeking the consent of the Indigenous Peoples involved. For example,*

- the indigenous organizations of the Itapúa and Caazapá Departments express that the State, with the financing of the UNDP and the GEF, is implementing the Proyecto Paraguay Silvestre [Paraguay Wilderness Project] in an area unilaterally declared by the State as the “Reserve for the San Rafael National Park.” These lands are the Mby’a Guaraní’s ancestral lands and this was done without the consultation or consent of the ancestral owners of said lands and in spite of the recognition by the State (particularly of INDI) that this area is the traditional territory of the Mby’a People; including at least 21,000 hectares which are part of a territorial claim and other indigenous lands which are already secured in the zone.

- Additionally, CAPI has knowledge of a project called the “Conservation of the Natural Patrimony of the Great South American Chaco” [Conservación de Patrimonio Natural del Gran Chaco Sudamericano] which contemplates activities on indigenous lands, is financed by the Inter-American Development Bank, and is promoted by conservationist. Nevertheless, few indigenous communities of the Chaco possess information about the same and CAPI is not aware of any

communities that have given their consent to the carrying out of said project.

9. The majority of the indigenous organizations that form the membership of CAPI permanently express their worries that while their land claims remaining pending because of a lack of political will on the part of the State (slowness of processes, lack of funds for acquiring/expropriating lands), the uncontrolled destruction and irreparable damage to their natural resources continues due to the clear cutting carried out by cattle raisers, loggers, agro industry, and other activities of third parties. For example,
 - in the Caazapa Department, the Asociación Tekyo Yma Jee'a Pavé details that there exists a great deal of external pressure on their lands, particularly from those that are dedicated to the illegal purchase of timber, the operation of clandestine sawmills, and the renting of indigenous lands for illegal transgenetic soy cultivation which requires the clearing of the forest and the use of agrochemicals that contaminate the environment – particularly soil and the waters.
10. Additionally, in some circumstances, it is the State itself that is approving these activities of natural resource exploitation in ancestral lands and territories. For example,
 - the Organización Payipie Ichadie Totobiegosode (OPIT) has denounced that in Alto Paraguay the Director of the Environmental Secretariat of the nation (SEAM) granted an environmental license to various farm owners permitting the clearing of forests in spite of the ongoing effect and existence of precautionary measures protecting these lands which are part of the central claim of the Totobiegosode Ayoreo indigenous peoples and currently form part of the nationally and internationally-recognized Chaco Biosphere Reserve.
 - Also, it is worth noting that CAPI, on repeated occasions, has expressed their discomfort with the Resolution of the Paraguay Indigenous Institute (INDI) N° s139/07 -- “by which Environmental Administration and Forest Management is regulated in lands assigned to indigenous communities” (*unofficial translation*) -- because it was done without the participation and consultation of organizations genuinely representative and because it strengthened the presence of third party outsiders in the indigenous communities.
 - The Asociación Pai Rekopave of the Amambay Department, expressed that the INDI resolution mentioned above, authorized and stoked the clear-cutting efforts in the lands of indigenous communities

and caused internal divisions, particularly the cutting of trees in the remaining forests of the ancestral lands of the Pai Tavytera Peoples – up to 25% in some communities.

11. Also, the indigenous communities find themselves cornered and surrounded by people that hold titles to their lands and natural resources, prohibiting them from entering their ancestral lands to carry out their traditional activities therein. This is the case, for example, by the Asociación de Comunalidad Indígenas Ava Guaraní of the Canindeny Department.
12. The civil society organizations have expressed well the general situation of the ancestral lands and resources in the indigenous communities of the Western and Eastern regions of Paraguay in their recent communication to this Committee:

Many communities that currently have lands are barely as small as islands, almost without forests, surrounded by pastures of neighboring cattle raisers – a situation evident in the Paí Tavyterá Community called Tajy-, which invade their cultivations and leave them exposed to fires in the dry seasons. In the most fertile regions the communities are surrounded by mechanized soy and wheat farms; they suffer the direct impact of herbicides and pesticides, the streams are silting, and the water (included that of the wells), is contaminated by agrochemicals utilized in the intensive and extensive farming practiced in vast zones.

The Western Region has also been strongly transformed, the clear cutting extends to Alto Paraguay and to the central Chaco region which is completely deforested, the borders of the cattle raising exploitation, in this case, has substituted forests for artificial pastures and cattle, where the indigenous constitute the main cheap labor, in conditions of exploitation that the OIT has classified as "modern slavery"¹ (Unofficial Translation)

13. Furthermore, while the State mentions in paragraph 17 of its report Paraguay's ratification of Convention (No. 169) concerning Indigenous and Tribal Peoples in Independent Countries, in spite of this it does not mention that the State is in permanent violation of various articles of this Convention, in particular articles 13 through 18 regarding the rights to land, territories and resources, and article 6 regarding the rights of Indigenous Peoples to prior consultation and to grant or withhold their consent to any activities that may affect their fundamental rights. The examples provided above and in the rest of this report support this fact.

¹ Executive Summary of the first report of civil society regarding compliance with the ICESCR (International Covenant on Economic, Social and Cultural Rights) in Paraguay for consideration of the CESCR (Committee on Economic, Social and Cultural Rights) to be held during its 39th period of sessions from November 5-23, 2007, pars. 45-46, see <http://www.ohchr.org/english/bodies/cescr/docs/info-ngos/pidescpy2.pdf>.

14. Finally, this Committee has affirmed that the right to self-determination consecrated in article 1 requires that the State Party make all necessary efforts to guarantee that the Indigenous Peoples are not deprived of their means of subsistence.² As explained in greater detail below, due to the exploitation activities previously described, and the special relationship that Indigenous Peoples have with their lands that sustain them through gathering activities, hunting, farming, and fishing, there is a deprivation of these means of subsistence.
15. *In light of the above, CAPI requests that the Committee ask the State to provide more information about the cases described above, and recommend that the State take all measures necessary to immediately carry out the general restitution of all indigenous lands to the indigenous communities, and the abstention of all activities that can affect their land rights until the State has delimited, demarcated and titled these lands in accordance with the customs and values of said communities. CAPI requests that the Committee recommends that the State make the necessary legislative and administrative reforms and dedicate sufficient economic resources to guarantee the rapid and effective processing of indigenous peoples land claims.*

ARTICLE 2

16. *CAPI wishes to express to the Committee how important it is to demand information from the State regarding “desegregate statistical data about indigenous peoples, that permits appreciation of the level of enjoyment of their rights to health, to housing and to education” (See paragraph 5 of the Committee’s List of Questions (September)).* It is notable that there is an absence of a discussion of indigenous issues in the sections of the State’s Report dealing with these areas. (See in particular paragraphs 380-392, 438-552 (health/food), 553-613 (education), 393-400, 419-437 (housing) of the State’s Report).
17. The right to not be free from discrimination in the enjoyment of the rights articulated in the Covenant. Under article 1, the Covenant does not permit discrimination against Indigenous Peoples, “particularly with regard to

² Russian Federation, Final Observations of the CESCR, E/C.12/1/Add.94 (12 December 2003), par. 39.

access to land ownership, housing, health services and sanitation, education, work and adequate nutrition.”³ Nevertheless, great disparities exist between the Indigenous Peoples of Paraguay and the majority of the non-indigenous population of the country. They do not have equality in the enjoyment of these rights and they continue to be the most vulnerable groups of society. CAPI describes in greater detail the situation of indigenous peoples regarding adequate health, education, and housing in the following paragraphs. (See discussions below regarding Articles 11-13).

ARTICLE 11

18. CAPI would like to reiterate the importance of that the Committee has noted in paragraph 5 of its List of Questions (September) that “only 2.5% [of the indigenous population] has access to potable water” and that the Committee requests, consistent with the rights affirmed in articles 1, 2, 11 and 12 “detailed and up to date information about the measures that are being taken...to improve this situation.”

19. Right to Water: As indicated by the question put forward by the Committee under your review of Paraguay’s compliance with Article 2 of the Convention, and the General Comments of this Committee, it can be said that this right is based in articles 1, 2, 11 and 12 of the Covenant. In its General Observation No. 12 interpreting articles 11 and 12 of the Covenant, the Committee declared that “Taking note of the duty in article 1, paragraph 2, of the Covenant, which provides that a people may not ‘be deprived of its means of subsistence’, States parties should ensure that there is adequate access to water for subsistence farming and for securing the livelihoods of indigenous peoples.”⁴ In light of this, this Committee declared that “State Parties should give special attention” to Indigenous Peoples’ access to water, and particularly recommends that “Indigenous peoples’ access to water resources on their ancestral lands is protected from encroachment and unlawful pollution. States should provide resources for indigenous peoples to design, deliver and control their access to water.”⁵

20. Currently, the dry period in Paraguay is having a devastating impact to the lives of indigenous peoples, particularly in the Western Region. Regardless

³ Venezuela, Final Observations of the CESCR, E/C.12/1/Add.56, 21 May 2001, par. 12.

⁴ CESCR General Comments No. 15, The Right to Water (articles 11 and 12), par. 7.

⁵ *Id.*, par. 16(d).

of the dryness that is occurring in Paraguay at this moment, the State still has not provided secure potable water and in sufficient quantities to the indigenous communities. The absence in the State's Report of any mention of this indigenous problematic regarding access to potable water demonstrates the gravity of the situation and the government's failures and omissions regarding the same. (See paragraphs 406-408 of the State's Report entitled "population with access to potable"). In fact the situation is so critical that:

- in the Presidente Hayes Department, the Asociación Angaite de Desarrollo Comunitario reports to CAPI that in this year alone, nine people died from preventable diseases that are the consequence of the ingestion of contaminated water. CAPI knows that where there exists deprivation of water, there is a prevalence of chronic malnutrition.
- The Ayoreos of the Chaco, la Union de Nativos Ayoreos del Paraguay (UNAP) and la Organización Payipie Ichadie Totobiegosode (OPIT), have told CAPI that the intensive exploitation plans carried out by private landownerse – particularly the deforestation carried out by agricultural and cattle raising interests – have destroyed the watering holes, brooks and lagoons of their ancestral territories that have a current impact on the lives of their people, especially on their relatives that live in voluntary isolation in the forest. It is reported that these relatives drink salty water from watering sources that they are now losing by massive deforestation, considering the fragility of the Chaco soil. Furthermore, some communities now have to depend on the purchase and transportation of water by trucks from businesses and others.
- Also, the Asociación de Comunidades Indígenas de Itapúa (ACIDI) has mentioned to CAPI that the use of pesticides in Itapúa Department, particularly for soy cultivation, has left their rivers and other water sources contaminated. In some periods, the Mby'a Guarani say that the color, smell and taste of the water changes significantly and it is impossible to drink it. The gravity of the problem is increased by the fact that their relatives that continue to live in voluntary isolation are frequently drinking from these sources of water.

21. CAPI confirms the importance that the Committee monitors, consistent with the rights affirmed in article 11, the measures that the State is taking against the "grave situation" of the "destruction of indigenous forests" (see paragraph 29 of the Committee's List of Questions (September)).

22. Right to Adequate Housing (paragraph 1 of article 11). In its General Comment No. 7, this Committee observed that the Indigenous Peoples are among the most vulnerable to eviction and “all suffer disproportionately from the practice of forced eviction.”⁶
23. The 1992 Constitution of Paraguay “prohibits the removal and relocation [of Indigenous Peoples] from their habitat without the express consent of the same.” Nevertheless, there is a history of forced evictions of Indigenous Peoples in Paraguay that the State still has not completely redressed. For example,
- in the Alto Paraná Department, as a result of the construction of the Binational Hydroelectric Corporation (Brazil and Paraguay) known as ITAIPÚ, in the 1970s the Ave Guaraní indigenous communities were forced to relocate from their ancestral lands and the communities dispersed. Because of this, the debt that the Paraguay State has to these people is very great and should be paid. During this period a group of families (at the end of the 1970s) had settled in some 2,000 hectares suggested by the Paraguay State, that until now continues to be in conflict, and there exists other alleged proprietors that threaten the indigenous with evictions – one being a national senator.
 - In 1996, with the support of the Asociación Avá Guaraní de Alto Canindyú (ACIDI), the indigenous communities presented a request to ITAIPU for the initiation of a process for partial compensation. This process still has had no results.
 - Also, ACIDI, of the Itapúa Department, has accompanied the request of the Pindo indigenous community that is in proceedings before the Paraguay State, which at the end of the 1970s and early 1980s, together with Argentina – constructed the Yasyreta Bi-nacional Hidroelectric Dam. During this period the Mby’a of the South were displaced from their traditional lands – some 60,000 hectares in total – without their consent, nor prior consultation, the Yasyreta island being only the size of 46,000 hectares, violating national laws, such as Ley 63/68.⁷ They were relocated years later to a site of less than 400 hectares after moving from one place to another. Currently, they have a claim for historic reparations for some 15,000 hectares.

⁶ CESCR General Comment No. 7, The right to adequate housing (Art.11.1): forced evictions (20 may 1997), par. 10.

⁷ That ratifies International Labour Organization Convention (No.107) regarding indigenous populations.

24. Also, in the Canindeny and Itapúa Departments, these same communities still have no land tenure security, nor reparation or compensation for the damages caused by the previous relocations. ***CAPI requests that the Committee asks information from the State about the measures that it is taking to remediate the impact of these historic forced removals.***

25. Right to Adequate Food. Recognizing their special relationship with their lands and their dependence on the same for subsistence, this Committee, in its General Recommendation No. 12 affirmed that “[a] particular vulnerability is that of many indigenous population groups whose access to their ancestral lands may be threatened” and that the right to adequate food consists of a right to *access*.⁸

26. Many indigenous communities of Paraguay live in a situation of permanent poverty and they have insufficient access to food supplies. In too many cases, they are affected by malnutrition. For many Indigenous Peoples, the lack of employment opportunities and access to employment, discrimination in employment, and/or their remote rural location of these peoples make access to the food difficult. For many, their existence depends on gathering, hunting, and farming to feed themselves. Unfortunately, contributing to a diminishment of access to the natural resources that sustain the indigenous communities and their members, there is:

- Contamination of the aquifers and the small rivers that feed the communities, animals, and their gardens,
- Over-hunting by non-indigenous invading their lands,
- Deforestation and disappearance of the forest due to agro-industry, large-scale soy cultivation, and the exploitation of timber,
- Forced relocations due to mega-projects not consulted with the affected communities, and
- the division and lost of their ancestral lands and sales to private persons and entities.

By not preventing these activities, the State is depriving the means of subsistence guaranteed by paragraph 2 of article 1 of the Covenant and the right to food guaranteed by article 12.

27. CAPI respectfully requests that the Committee consider this grave situation and recommend to Paraguay that it take the measures necessary

⁸ CESCR General Comment No. 12, The Right to Adequate Food (art. 11), par. 13.

to alleviate the hunger and malnutrition affecting the indigenous peoples in levels disparate from the rest of the Paraguay population.

ARTICLE 12

28. The right to the enjoyment of the highest attainable standard of health. The Committee has interpreted that this right includes certain elements including access without any discrimination, the absence of discrimination in goods and services, and the physical accessibility to health establishments, goods and services to “all sectors of the population, especially vulnerable or marginal groups, such as ethnic minorities and indigenous peoples.”⁹
29. It is notable that in the State’s Report, specific information is not presented on the health of Indigenous Peoples other than a recognition that Indigenous Peoples are “the most vulnerable groups” when it comes to access to health. (See paragraph 514 of the State’s Report). In truth, as explained by the civil society organizations in its report to this Committee, “[n]o systematic studies exists about indigenous health at the national level, nevertheless, the available information suggests that indigenous peoples have indicators that demonstrate infant mortality, malnutrition, tuberculosis and other transmissible diseases at levels higher than the rest of the rural population.”¹⁰
30. This Committee has clarified that “the drafting history and the express wording of article 12.2 acknowledge that the right to health embraces a wide range of socio-economic factors that promote conditions in which people can lead a healthy life, and extends to the underlying determinants of health, such as food and nutrition, housing, access to safe and potable water and adequate sanitation, safe and healthy working conditions, and a healthy environment.¹¹ In this context, it is certain that the grave health problems of Indigenous Peoples in Paraguay arises from hunger, the lack of potable water, contamination of the aquifers (absence of a healthy environment), the lack of adequate food and access to the resources of their ancestral lands to carry out necessary subsistence activities (hunting, gathering, fishing, farming, etc.).

⁹ CESCR General Comment No. 14, The right to the highest attainable standard of health (Art. 12), par. 12.

¹⁰ Executive Summary of the first report of civil society regarding compliance with the ICESCR (International Covenant on Economic, Social and Cultural Rights) in Paraguay for consideration of the CESCR (Committee on Economic, Social and Cultural Rights) to be held during its 39th period of sessions from November 5-23, 2007, pars. 47, see <http://www.ohchr.org/english/bodies/cescr/docs/info-ngos/pidescpsy2>.

¹¹ CESCR General Comment No. 14, The right to the highest attainable standard of health (Art. 12), par. 4.

31. Almost all of the members of CAPI have declared that in the communities that they represent, access to health is almost non-existent and very sporadic and comes less from State support, and more from the support of NGOs and/or churches and private entities. No programs or serious health monitoring exists. With the gradual destruction of their forests, access to their natural and traditional medicines is also disappearing.

- As described above, in the Angaité Peoples of the Presidente Hayes Department, nine people died this year by preventable diseases resulting from the contaminated water and the lack of medical attention to the sick.
- The Unión de Nativos Ayoreos de Paraguay representing the communities in Boquerón and Alto Paraguay, indicate that their people only have access to a mobile clinic once a month.
- In the Amambay Department, the Organización Paí Tavytera Reko Pave notes that they only have small assistance from the Ministry of Health and only with respect to vaccinations.
- The Organización Payipie Ichadie Totobiegosode reports to CAPI that there is always sicknesses among their people. When there are sick individuals, the communities have to look to the support of NGOs and the scarce resources of the Indigenous Peoples themselves to bring their members to the hospital in the city where nobody speaks their traditional language and many times individuals can not pay for the medical exams and prescriptions recommended.

32. The health of Indigenous Peoples living in isolation also is an issue that greatly worries CAPI and its members. In the Alto Paraguay and Boquerón Departments in the Chaco and in the Itapúa Department in the South, there still exist Indigenous Peoples living in voluntary isolation. In spite of the recognized presence of these peoples for years and the increasing threat of forced contact due to the incursion of extractive in their lands and the adverse impact on their scarce resources, ***the State still has no law, policy and contingency/emergency plan to avoid forced, violent contacts and avoid, in the event of contact, the possibility of transmitting contagious disease to these isolated people who have no immunological defenses.*** Recently the State, through a Multi-sectorial Commission and an Inter-institutional Roundtable, has begun to dialogue with indigenous organizations and their advisors in the Chaco about this issue, but these initiatives still lack definitive and permanent results. CAPI hopes that the political will of the State will be embodied in the development of a concrete policy, but this is still not defined.

33. ***CAPI requests that the Committee express its concern over the lack of a policy, law, and contingency plan regarding the protections of the Indigenous Peoples living in voluntary isolation or initial contact and that it recommend that the State take the necessary measures, with certain urgency, to remediate this omission.***

34. Finally, regarding “the basic determining factors of health, such as ... a healthy environment”, CAPI which to highlight in the State’s Report, paragraphs 438 – 454, Paraguay describes the measures that it is taking to secure a “healthy environment” for all the persons in the country. Particularly it indicates that Law No. 352/94 on protected areas declares “of social interest and public utility the national system of protected wilderness areas” (unofficial translation) (see parr. 442). In the context of this discussion on conversation ad biodiversity which has the stated goal of securing a healthy environment, with the financing of the GEF (Global Environmental Facility) and the United Nations Development Program (PNUD), the State has implemented the Paraguay Wilderness Project [*Proyecto Paraguay Silvestre*] under which it has superimposed the Reserve for the San Rafael National Park on the ancestral lands of the Mby’a Guarani without the consent of the Mby’a (required not only by ILO 169, and the Covenant, but also Article 24 of the Law of Protected Wilderness Areas),¹² and up and until now, without the full dissemination of information relevant to the affected communities.

35. ***CAPI request that the Committee recommend that the State take no further actions that to establish protected areas without the full respect and recognition of the rights of Indigenous Peoples to their ancestral lands and their right to possess, control, manage and benefit from such lands and resources in accordance with the traditional uses and practices of the peoples in question. CAPI requests that the Committee affirms that only in this way, with the collaboration and consent of indigenous communities, can the State carry out a successful strategy to guarantee conservation, a healthy environment, and in doing, the right of Indigenous Peoples to health.***

36. (See also, the above discussion about the right to water (paragraph 19-22)).

¹² Art. 24 of the Law on Protected Wilderness Areas expressly prohibits the expropriation of “property, title or not, with indigenous community settlements ...” (unofficial translation).

ARTICLE 13

37. Right to Education. In its General Recommendations No. 13, this Committee affirms that under article 13 “State have the obligations to respect, protect and fulfill each of the “essential features” (availability, accessibility, acceptability, adaptability) of the right to education.¹³ Accessibility includes education that “is culturally acceptable.”¹⁴
38. The Second Indigenous Census has explained the alarming social situation of indigenous peoples in the results of its official figures, such as the high illiteracy, that affects 51% of the indigenous peoples, and an average of 2.2 years of study with indigenous of 10 year of age or more, compared to seven years of education registered in the national non-indigenous population. The problem is worse in rural zones (53.3%), comparatively with urban areas (29.2%). The indigenous of Paraguay are settled predominantly in rural areas (91.5%).
39. In the context of the indigenous communities represented by CAPI, it can be confirmed that there is a lack of access to adequate education including basic schooling. For example,
- in the Presidente Hayes Department, where there are 65 communities pertaining to the Pueblos Enxet, Enlhet Norte, Angaite, Sanapana, Toba Qom and Nivacle peoples, the Coordinadora de Líderes del Bajo Chaco informs CAPI that the government promised to establish indigenous schools, but it has still not done so.
 - In the Department of Alto Paraná, the Asociación de Comunidades Indígenas Guaraní de Alto Paraná explains that there exists no access to basic education much less higher education.
 - The Unión de Nativos Ayoreos de Paraguay, declares that in the Boquerón and Alto Paraguay Departments, generally there are no schools supported by the State. The community members interested in education have to leave for cities such as Filadefia, Carmelo Peralta, or Mortiño (in Brazil) to obtain education that is culturally foreign to the Ayoreo; in leaving, they have to separate from their families and be isolated from their traditional customs and practices.

¹³ CESCR General Comment No. 13, The Right to Education (art. 13), par. 50.

¹⁴ *Id.*

- In the Itapúa Department, the Asociación de Comunidades Indígenas de Itapúa (ACIDI) explains that with respect to education, only six member-communities have schools, but according to them, this does not mean education but more alienation due to the fact that the majority of the teachers are non-indigenous and there is no socio-anthropological component related to the Mby'a Guaraní. Nevertheless, some communities continue requesting school placements and schools, but ACIDI has never been consulted by the State on any plans and programs of studies used by the Ministry of Education and Culture (MEC).
- Furthermore, in various cases where communities do have primary schools and professors (sporadic as they may be) – as in the Chaidi and Arocojadi communities of the Totobiegosode Ayoreo and in some communities of the Caaguazú Department where the Mby'a indigenous live, the access and/or culturally acceptable instruction is largely made possible by the communities and the support of NGOs and private persons. The contributions of MEC have been minimal.

40. *Due to the information provided above, CAPI sees that there is at least a critical need for: establishing more community schools provide scholarships to indigenous members wanting to pursue secondary education or university studies, training more indigenous teachers, and providing more materials in the mother language of the affected people. CAPI requests that the Committee continue to monitor this issue with the Paraguay State. Without adequate education, the capacity of our people to determine their own development with identity is threatened.*

ARTICLE 15

41. The right to take part in cultural life. In the context of the right of all persons to take part in cultural life, the State's Report (see paragraphs 614-633) does not mention the measures it is taking to avoid the destruction of indigenous culture caused by the diminishment of their lands. CAPI already has noted the activities of third parties that are affecting the animals, plants and water upon which indigenous peoples depend for their subsistence and the carrying out of traditional cultural practices (access to sacred sites, areas for hunting and establishing their farms, etc.). In addition, it its worth mentioning that various indigenous communities – particularly in the Departments of Alto Paraguay, Boquerón, Caaguazú, and Amambay are worried by the invasion of other religions and Christian evangelization

within their ancestral lands. Such invasions have generated ill feelings and fights in the communities, and they do not let the indigenous Shamans work and they interfere in indigenous religious practices and beliefs. For example,

- In the Alto Paraguay Department, the evangelist, New Tribes Mission, meets regularly with the Totobiegosode Ayoreo group that left the forests in 2004 and pressures them to abandon their traditional beliefs and help the missionaries make contact with their relatives that still live in voluntary isolation in the forests.

42. At this time, there is no State action to protect the Indigenous Peoples from this type of pressure, particularly in the contest of those in initial contact or voluntary isolation that are more vulnerable to such foreign influences. CAPI respectfully requests that the Committee take a special interest in this issue and requests that the Committee ask the State for additional information about its recognition of this situation and the measures that it is taking to avoid irreparable damages to the indigenous communities on the part of unwanted evangelism.