

End of Mission Statement by the UN Special Rapporteur on Toxics and Human Rights, Marcos

A. Orellana, on his visit to Paraguay, October 3 to 14, 2022

Asuncion, 14 October 2022

I would like to express my sincere appreciation to the Government of Paraguay for its invitation to visit the country and for its excellent cooperation and efforts to enable me to make the most of my time in the country. I am very grateful for the frank and constructive discussions I had with officials of the national government.

I had the privilege of speaking with Ministers, Vice Ministers and officials from various government institutions, including (in order of the meetings): Ministry of Foreign Affairs; Ministry of Agriculture and Livestock; National Service of Quality and Plant Health and Seeds; National Institute of Rural and Land Development; Secretariat of Consumer and User Defense; Supreme Court of Justice; Prosecutor's Office; Ministry of Environment and Sustainable Development; Secretariat of National Emergency; Ministry of Public Works and Communications; Honorable House of Representatives; Honorable Chamber of Senators; Paraguayan Institute of Indigenous People; Ministry of Justice; Ministry of Public Health and Social Welfare; Ministry of Labor, Employment and Social Security; Ministry of Education and Science; and Ministry of Childhood and Adolescence.

I also had the honor of speaking with officials from the Municipality of Asunción. I am also grateful for the opportunity to visit the Tayi Ambiental waste management plant in Villa Hayes, and to visit the Cateura landfill. I am also grateful for the opportunity to have participated in the VI Seminar of Human Rights Defenders in Asunción.

I am grateful for the opportunity to have visited communities in Minga Porá, where I have seen schools that have been closed due to the impacts of pesticides, and Curuguaty, where I have visited people and communities that have resorted to the Human Rights Committee in the cases of Colonia Yerutí and Campo Agua'ẽ. I am also happy to have visited a peasant community, the Crescencio Gonzalez settlement, who farms the land without using pesticides. Likewise, I have visited Paso Yobái, where gold mining with mercury and cyanide is practiced. I am also grateful to have been able to visit the communities of Limpio and Primero de Marzo, where neighbors have organized themselves to protest environmental contamination. I am grateful to have been able to speak with relatives of pesticide victims. I thank the community members in all these places for opening their doors to me, for the information provided, and for their generosity in taking the time to talk with me about their experiences related to human rights affected by exposure to toxic substances.

I am also very grateful for the fruitful exchanges with representatives of Paraguay's vibrant and active civil society, who have generously given their time to contribute to the success of the visit. I am grateful for the willingness of several private sector associations and guilds to meet with the mandate. Finally, I would like to extend my thanks to the local UN offices for their support in the preparation and duration of the visit.

In this final phase of my visit, I am pleased to share my preliminary observations. I will submit a full report on my official visit to Paraguay to the UN Human Rights Council in September 2023.

Introduction

I would like to begin by congratulating Paraguay for having ratified all international agreements on chemicals and wastes (Basel, Rotterdam, Stockholm and Minamata Conventions).

During my visit, I have observed that Paraguay has strong environmental laws. However, most of them are not enforced. This generates a lack of protection of people against environmental risks, particularly around agroindustrial extraction.

Paraguay has a great opportunity to address these problems in a decisive and structural manner. If it fails to do so, the country runs the risk of being left out of international markets that are increasingly seeking to ensure supply chains that respect the environment and human rights.

I would like to mention, as I have done repeatedly, the abhorrent double standards of countries that ban the use of pesticides because they are dangerous to people's health and the environment, but at the same time allow them to be produced and exported to developing countries. At the same time, it is also the responsibility of the Paraguayan State to protect the human rights of its population and to restrict the importation of highly hazardous pesticides.

Escazú Agreement

I congratulate the State of Paraguay for signing the Regional Agreement on Access to Information, Public Participation and Access to Justice in Environmental Matters in Latin America and the Caribbean, known as the "Escazú Agreement". However, I am extremely concerned about the disinformation I have seen in Paraguay surrounding the Agreement. Particularly alarming is the role played by the Archbishop of Asunción and certain business sectors in Paraguay in spreading false information about the Agreement, which contributed to the Executive Branch's decision to withdraw the bill for approval in the Senate. Despite this misinformation, it is encouraging that other business entities are open to an informed dialogue about the Agreement.

The Paraguayan State should immediately ratify the Escazú Agreement to strengthen capacities at all levels to guarantee the right to a healthy environment. The Agreement would ensure better access to information and spaces for meaningful participation in environmental decision-making and would strengthen mechanisms for access to environmental justice. In addition, the Agreement recognizes the important work of environmental defenders for democracy, sustainable development, and human rights.

Access to Justice

I would like to highlight the human rights network of the Executive Branch as a good practice (under the coordination of the Ministry of Justice). The Paraguayan State could use this network to address the harassment of human rights defenders. However, I was alarmed to receive information about violations against human rights defenders. For example, indigenous leaders and peasants, among other human rights and environmental defenders, are frequently charged by the Prosecutor's Office. I am concerned about the use of criminal law as an instrument of repression of protest and social articulation.

I am pleased to see that initiatives are being discussed in Congress on a law to create a specialized agrarian and environmental jurisdiction, a law to protect wetlands, and a law to update environmental crimes. Regarding the latter initiative, during the visit I have repeatedly noted the importance of updating Law 716 (as amended) on environmental crimes to combat impunity. Fines are not a substitute for imprisonment in the face of serious harm to the environment and people.

I am particularly concerned about the lack of compliance with the rulings of the Human Rights Committee. It has been three years since the Colonia Yerutí ruling, one year since the Campo Aguaẽ ruling, and more than a decade since the communities filed their first complaints in Paraguay. I am concerned to see the abandonment of the victims by the State. The communities have not received measures of reparation and compliance with the rulings. Moreover, not only have the rulings not been complied with, but toxic agrochemicals continue to be spread around these communities.

I have listened to relatives of victims who have died from exposure to agrochemicals, and I am concerned that the penalties for the aggressors are minor and do not correspond to the seriousness of the crimes.

Environmental Management

I would like to underscore the efforts of the Ministry of Environment and Sustainable Development to implement the Stockholm Convention on Persistent Organic Pollutants, including the preparation of a National Implementation Plan and a subsequent update.

I would also like to highlight the creation in the Supreme Court of Justice of an environmental law division, which operates jointly with the human rights division. At the same time, I have observed that, in repeated cases, the Supreme Court of Justice has obstructed the application of environmental legislation through precautionary measures that maintain a polluting status quo. Three clear examples are the importation of used tires, used cars, and the proliferation of gas stations in the urban radius of Asunción.

In my visits to Limpio and Primero de Marzo, community members informed me about cases of environmental contamination in their communities. In the community of Primero de Marzo, where neighbors are affected by the operations of a rice plantation, I was able to appreciate the lack of support mechanisms for the community to access information and justice.

In the case of Laguna Cerro in Limpio, community members explained to me that the State only acted after media coverage of the contamination. Having to resort to media campaigns and celebrity statements to get the state to respond reflects structural challenges in environmental protection and human rights mechanisms.

One of these challenges is the apparent conflict of interest that stems from the Ministry of Environment and Sustainable Development due to its double function of approving environmental impact assessments, on the one hand, and the subsequent auditing of compliance with the conditions of approval, on the other. This problem is also related to the alarming lack of capacity of this Ministry, which has twelve inspectors for the entire Paraguayan territory. From any point of view, this number is totally insufficient.

Also, the Ministry does not have the capacity to measure pollutants emitted into the air. The generation of information on environmental air quality is the gateway to the design of an adequate environmental policy. For example, the Ministry does not monitor the dioxins generated by the incineration of tires by cement plants, which are extremely hazardous to human health. This creates a situation where companies are self-monitoring. The State should in no way abandon its oversight and control roles.

Waste Management

I would like to highlight the efforts of the Municipality of Asunción in learning about international best practices to address the challenges of the closure of the Cateura landfill. With this closure, the Municipality is facing a problem of capacity for the environmentally sound disposal of household waste.

I would also like to commend the Municipality for its efforts with recyclers working informally in Cateura. These recyclers work in precarious conditions and require support to ensure a just transition to a circular economy.

Regarding Tayi Ambiental's plant in Villa Hayes, I would like to congratulate their efforts to manage hospital waste in an environmentally sound manner. However, when it comes to the containment of untreated hazardous waste, a plan for its definitive management is needed. It is also positive that the environmental monitoring of the plant is carried out by an outsourced company. On the other hand, these independent monitoring reports are not available to the public.

It is of concern that Paraguay does not have a definition or classification of hazardous waste, nor does it have actual reports on hazardous waste generation. This situation results in poor hazardous waste management in the country. It is to be expected that the recently adopted National Hazardous Waste Management Plan will address these deficiencies.

I would also like to mention methyl tert-butyl ether (MTBE), which is used as an oxygenate in gasoline. A study conducted by the National University of Asunción detected MTBE in 2017 in the Patiño Aquifer, which is one of the main sources of water for the approximately three million inhabitants of the Asunción metropolitan area. However, these levels were detected before the proliferation of gas stations in the city of Asunción, so urgent measures are needed to prevent the contamination of soils and the aquifer with MTBE.

Pesticides

Pesticides, also called plant protection products, agrotoxics, or agrochemicals, are one of the main environmental and human rights challenges facing the country. I would like to emphasize, as several Special Rapporteurs have repeatedly done, that it is a myth that pesticides are necessary to feed the world.

It is worrying to see the undue influence of companies on public policy on pesticides in Paraguay.

The agricultural production model in Paraguay is largely characterized by soybean monocultures and the use of pesticides. At the same time, I have learned about good practices in the rotation of crops with livestock. It is important to highlight that the area used by agribusiness grew 234% in the last two decades, while the area for small-scale agriculture decreased by almost 50% in the same period. It is also key to highlight the lack of data, such as an updated agricultural census, which would be necessary to inform robust policies.

Paraguay enacted a Law 2524, known as "Zero" Deforestation in the Eastern Region, in 2004. However, according to satellite mapping between 2006 and 2016, an average of 60 hectares per day were deforested. This law was replaced by Law 6676 in 2020, also known as Zero Deforestation. Deforestation occurs in a context of territorial inequity and lands illegally granted to those who were not subjects of the Agrarian Reform during the dictatorship of General Alfredo Stroessner. These lands are known as "ill-gotten lands" and cover about 20% of the country. These ill-gotten lands are some of the best lands for crops, which generates territorial conflicts and exclusion.

Currently, 94% of agricultural land in Paraguay is used for agroindustry dependent on chemical inputs. The average annual pesticide discharge is 4.25 liters per hectare and has been increasing. This figure, which alone would be alarming, is even more chilling when one considers that the most imported pesticides in the country are glyphosate, 2,4-D and paraquat.

These pesticides are highly hazardous. For example, paraquat has been banned in the European Union since 2007 and in Switzerland since 1989 because it is considered too dangerous for farmers, even with protective equipment. However, at the last conference of the parties to the Rotterdam Convention held in June this year, Paraguay opposed the inclusion of paraquat, among other pesticides, in Annex III of the Convention, ignoring the recommendations of the Convention's own scientific committee.

This frustrates the science-policy interface, which is at the basis of the Convention, and therefore undermines its effectiveness.

Law No. 3.742 on the control of phytosanitary products for agricultural use establishes protection measures for the application of pesticides. These measures include buffer zones or living barriers between crops and communities, wind and temperature conditions under which spraying is prohibited, control and supervision measures, and others. However, I have been able to see with my own eyes the flagrant non-compliance with this law. The lack of buffer zones results in the drift of pesticides over the bodies, homes and crops of the surrounding communities. The insufficient action of the competent institutions to effectively monitor compliance with the law, particularly the National Service of Quality and Plant Health and Seeds, is resulting in serious damage to the environment and people's health.

The testimonies I have heard repeatedly throughout my visit about the lack of State action in the face of the numerous cases of human rights violations related to the use of hazardous pesticides in Paraguay are extremely disturbing. This is despite the fact that, since 2003, Paraguay has been on the FAO list of "countries of concern" for its use of pesticides; and despite the fact that the State has received, since 2007, repeated observations and recommendations from international organizations regarding the use of pesticides; and despite the decisions of the Human Rights Committee declaring Paraguay's international responsibility for the impact of pesticides on the right to life and other rights.

As a result, pesticides affect all aspects of the communities they surround, from their right to a dignified and healthy life, to education, to housing, to food, and to a healthy environment, among others. Starting with the eviction of peasant communities and indigenous people from their lands, and ending with death by poisoning, the massive and indiscriminate use of pesticides on crops in Paraguay has created an unsustainable situation for communities that were already in a very vulnerable situation. Pesticides, which for agribusiness have resulted in great economic benefits, for the communities cornered by the crops have resulted in the loss of their territories, illnesses, disabilities, deaths, and social and judicial conflicts.

Given this context, it seems to me key to highlight the need for epidemiological monitoring by the Ministry of Health. The Ministry currently has a tool that in practice only captures cases of severe acute intoxications. On the other hand, communities have normalized affectations such as headaches and nausea, and the health system does not register these cases as pesticide exposure.

In addition, I am particularly concerned about the effect that pesticides are having on future generations in Paraguay. Children in rural areas are being affected by the indiscriminate effects of pesticides, not only in terms of health, but also in terms of educational development. It saddens me greatly to see that, in the Eastern Region, more than 20% of schools are surrounded by crops and fumigations that do not comply with the protection measures established in Law 3742.

During my visit, I also had the opportunity to visit the Crescencio Gonzalez settlement, which, without state support, has managed to present a good alternative practice to the extensive cultivation of agrochemical-dependent transgenic products. The settlement, a 5,000 hectare state-owned territory with 1,300 inhabitants distributed in ten nuclei arranged in a radial form, with crops in circular expansion, demonstrates the economic, community and environmental benefits of a production free from pesticides. This model of community development has allowed the settlement to achieve food security, since its crops are enough to eat, sell at fairs and even give in solidarity to other peasant communities. On the other hand, I was alarmed by the testimonies of the community about the harassment they suffer for defending their land, in addition to the impacts on their health and crops from aerial spraying in neighboring monoculture plantations.

Mining

In Paso Yobái, the use of mercury and cyanide in gold mining is generating serious impacts. High levels of mercury contamination have been detected in fish in streams and in mine workers in Paso Yobái. The use of mercury and cyanide is also contaminating waterways and sediments. The mines dispose of their hazardous wastes, without proper treatment, into the streams.

According to testimonies received, mercury is easily accessible. This is symptomatic of the poor implementation of the Action Plan for small-scale gold mining in Paraguay under the Minamata Convention on Mercury. Insufficient efforts have been made to replace mercury with non-polluting technological alternatives.

I would also like to remind you that, according to the World Health Organization, there is no safe level of exposure to mercury. Furthermore, mercury is persistent, bioaccumulates and causes irreversible health and neurological damage. For the same reason, I am concerned that Paraguay's Action Plan under the Minamata Convention has no timeline for the elimination of mercury.

Conclusions

These are some of the issues I will discuss in my report to the Human Rights Council of the United Nations in September 2023. I will offer specific recommendations in that forthcoming report. But the State should not delay taking the steps necessary to address some of the concerns raised. For example, the State should take steps to immediately comply with the UN Human Rights Committee's rulings on the Campo Agua'ẽ and Colonia Yerutí cases. The State should also ratify the Escazú Agreement without delay to strengthen the capacity of its environmental institutions to guarantee the right to a healthy environment. In addition, the State should prohibit the import and use of hazardous chemicals that are banned or restricted in their countries of origin.

During my visit it became clear to me that many communities in Paraguay continue to be victimized by exposure to toxic substances. Some of the main concerns are: (1) the limited degree of protection of human health and ecosystems; (2) the lack of generation and dissemination of environmental and epidemiological information; (3) corporate impunity for human rights abuses; and (4) systemic obstacles to access to justice. Cutting across all these problems is the lack of effective enforcement of environmental legislation.

There is a pattern in Paraguay in which vulnerable groups, particularly indigenous peoples and peasant communities, find themselves cornered by pesticide-dependent crops. Although the right to non-discrimination is found in the Paraguayan Constitution, this right is not a reality for communities affected by contamination.

There is an urgent need to respect and guarantee the free and full exercise of human rights in the face of the threats posed by toxic substances in Paraguay, both on the part of the State and the companies involved.

Throughout my visit, it became clear to me that there is a need for greater articulation between governmental institutions, under the normative framework of human rights, as well as a greater rapprochement of these institutions to the population.

Finally, I would like to thank again the Paraguayan State for its invitation to visit the country and the great hospitality offered to me by the Paraguayan people during my two-week stay. In the months and years to come, I offer my technical support to address the challenges the country faces with regard to toxics and human rights.
