

Sawhoyamaxa Indigenous Community v. Paraguay

ABSTRACT¹

As the case of the Yakye Axa Indigenous Community v. Paraguay, this case, too, is about the legal battle by a dispossessed and depauperized indigenous community in the Chaco region of Paraguay to reclaim their ancestral lands. After a decade-long legal process, their case reached the Court. As in the Yakye Axa case, the Court found violation of several articles of the American Convention. However, this time it also found violation of the right to life of those who died because of their poor living conditions.

I. FACTS

A. Chronology of Events

End of nineteenth century: British businessmen buy land in the Paraguayan Chaco region through the London Stock Exchange to help the State pay its national debt after the War of the Triple Alliance.² The indigenous people who inhabit the land at the time are not aware of this sale.³

1901: The South American Missionary Society forms the first cattle estate in the Chaco to “evangelize and pacify” the local indigenous communities and hires indigenous individuals to work on the cattle estate.⁴

1933–1936: The Chaco War between Bolivia and Paraguay causes more non-indigenous people to settle in Northern Chaco, who consequently employ the local indigenous people on their estates.⁵ This new estate-

1. Megan Venanzi, Author; Zach Tripodes, Editor; Kathryn Benson, Chief IACHR Editor; Cesare Romano, Faculty Advisor.

2. *Sawhoyamaxa Indigenous Community v. Paraguay*, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 146, ¶ 73(1) (Mar. 29, 2006).

3. *Id.*

4. *Id.*

5. *Id.* ¶ 73(3).

based economy restricts the indigenous peoples' mobility in their traditional lands, and they eventually become sedentary.⁶ The Sawhoyamaxa, part of the South Enxet and North Enlhet Lengua ethnic groups, is among these now-sedentary indigenous communities that cannot roam ancestral lands in the Paraguayan Chaco.⁷

1991: The Sawhoyamaxa Community ("Community"), comprised of indigenous villages throughout different cattle estates in the Chaco, starts proceedings to reclaim their ancestral lands.⁸

August 6, 1991: Various indigenous communities of the Enxet ethnic group formally ask the Paraguayan Institute of Indigenous Affairs (*Instituto Paraguayo del Indígena*; "INDI") to recognize their leaders, Mr. Carlos Marecos Aponte and Mr. Teresio González, pursuant to Law No. 904/81 on the Status of Indigenous Communities.⁹ These leaders additionally request the Institute of Rural Welfare (*Instituto de Bienestar Rural*; "IBR") to return 8,000 hectares of ancestral land to the Community since it had originally been taken without compensation and was not currently being used productively.¹⁰ As a result, administrative proceeding No. 7597/91 begins.¹¹

September 4, 1991: The IBR's Office for Indigenous Advocacy forwards the case to the Engineering Department, which determines that the land the Community is seeking belongs to private owners.¹²

May 12, 1992: The IBR's Office for Indigenous Advocacy issues a report to verify the census on the Community and asks the Community to provide the name and address of the land's private owners so they can be served notice.¹³

May 25, 1992: The leaders of the Community inform the owners of the

6. *Id.*

7. *Id.* ¶ 73(5).

8. *Id.* ¶ 73(6).

9. Sawhoyamaxa Indigenous Community v. Paraguay, Merits, Reparations and Costs, ¶ 73(11).

10. *Id.* ¶ 73(18).

11. *Id.*

12. *Id.* ¶ 73(19).

13. *Id.* ¶ 73(20).

ongoing proceedings and ask the IBR to visit and inspect the land.¹⁴

June 3, 1992: The IBR's President asks INDI to research the Community's economic and social status along with its needs and expectations and to look into the land's condition and ownership status.¹⁵

February 16, 1993: INDI's Field Promoter recommends that its Legal Counseling Department admit the Community's petition.¹⁶

January 18, 1993: The IBR recommends that the Community and the landowner start a dialogue through the IBR's settlement and arbitration office after finally inspecting the land and verifying the census.¹⁷

February 22, 1993: Compañía Paraguaya de Novillos S.A. ("COMPENSA"), the owner of the land, files documents to assert legal domicile and to rebut the Community's land claim because it would seriously hurt the company's economic interests.¹⁸

April 13, 1993: INDI's Field Promoter reaffirms that the petition should be admitted.¹⁹

April 27, 1993: INDI's President of the Council decides to recognize Mr. Marecos Aponte and Mr. Teresio González as leaders of the Community after affirming through a social and anthropological report that the Community is scattered throughout the Chaco, that the Community is not registered with the Indigenous Communities National Registry (*Registro Nacional de Comunidades Indígenas*), and that these leaders have not been previously registered.²⁰

September 7, 1993: The official leaders of the Community start formal proceedings with INDI to get the Community recognized as a legal entity.²¹ They also request that their land claim be expanded to no fewer

14. *Id.* ¶ 73(21).

15. *Sawhoyamaxa Indigenous Community v. Paraguay, Merits, Reparations and Costs*, ¶ 73(22).

16. *Id.* ¶ 73(12).

17. *Id.* ¶ 73(26).

18. *Id.* ¶ 73(27).

19. *Id.* ¶ 73(12).

20. *Id.*

21. *Sawhoyamaxa Indigenous Community v. Paraguay, Merits, Reparations and Costs*,

than 15,000 hectares to comply with Article 64 of the State's Constitution, and that the IBR issue an injunction against the current owners because their activities are ruining the land.²² Finally, the Community requests a preliminary injunction on its ancestral lands from the IBR since the current owners are cutting down the land's forested area.²³

February 16, 1994: The Court of First Instance in Civil and Business Law, Fourth Rotation ("Court of First Instance, Fourth Rotation"), issues a preliminary injunction on the Community's ancestral land against corporations and current property owners Urbana Inmobiliaria S.A. ("Urbana") and COMPENSA to stop deforestation, and publicly registers a notice of *lis pendens* on the property.²⁴

March 16, 1994: The IBR recommends that COMPENSA and Urbana make an offer to sell the requested 15,000 hectares of land after reviewing a formal request by the leaders of the Community.²⁵

April 8, 1994: A deputy of the Chamber of Deputies of the National Congress visits the lands after the Community files a complaint that large areas of forest are being cut down.²⁶ The deputy finds that a sizeable area had been deforested in violation of the injunction.²⁷

May 12, 1994: The leaders of the Community reiterate their request to the IBR for ownership of their ancestral lands, now registered as owned by Roswell y Compañía S.A. ("Roswell") and Kansol, S.A. ("Kansol"), who are once again asking for a sale offer.²⁸

July 5, 1994: The Court of First Instance, Fourth Rotation, issues an injunction against Urbana and COMPENSA's property and registers a *lis pendens* on the property owned by Roswell and Kansol after discovering that the land being deforested was not covered by the previous in-

¶ 73(13).

22. *Id.* ¶ 73(29).

23. *Id.* ¶ 73(55).

24. *Id.*

25. *Id.* ¶ 73(33).

26. *Id.* ¶ 73(56).

27. Sawhoyamaya Indigenous Community v. Paraguay, Merits, Reparations and Costs, ¶ 73(56).

28. *Id.* ¶ 73(34).

junction on ownership rights.²⁹

September 20, 1995: Representatives for COMPENSA and Urbana ask the IBR to withdraw the companies from case file No. 7597/91 since they sold the land in question to Roswell and Kansol.³⁰

September 16, 1996: The Community once again asserts its claim to its ancestral lands, restating the specific plots in the Chaco at issue that are owned by Roswell and Kansol, and requests that the corporations make sale offers.³¹

October 31, 1996: The IBR notifies Roswell and Kansol of the Community's request and suggests that they make offers for sale.³²

February 18, 1997: The IBR forwards case No. 7597/91 to INDI after a request from the Community.³³

February 26, 1997: The Community's representative files a brief with INDI requesting that its ancestral land be condemned so that the National Congress may handle the issue.³⁴

May 7, 1997: INDI issues resolution No. 138/97, which affirms the Community's request for condemnation and recommends that the IBR end the administrative proceedings surrounding case No. 7597/91.³⁵

May 13, 1997: The Community's leaders, sponsored by national deputies, introduce a bill to the President of the Chamber of Deputies of the National Congress stating that the condemnation of Roswell and Kansol's land is "of social interest" and requests that the land be transferred to the Community.³⁶

June 16, 1997: INDI issues resolution No. 25/97, which recognizes the

29. *Id.* ¶ 73(57).

30. *Id.* ¶ 73(35).

31. *Id.* ¶ 73(36).

32. *Id.*

33. *Sawhoyamaya Indigenous Community v. Paraguay, Merits, Reparations and Costs*, ¶ 73(37).

34. *Id.*

35. *Id.* ¶ 73(38).

36. *Id.* ¶ 73(48).

Community as a legal entity, and forwards the case to the Ministry of Education and Worship for administrative proceedings.³⁷

October 6, 1997: The Ministry of Education and Worship issues report No. 1140, stating that as long as the Community meets all necessary requirements, nothing should prevent it from becoming a legally recognized entity.³⁸

May 20, 1998: The Committee on Human Rights and Indigenous Affairs of the Chamber of Deputies of the National Congress proposes a resolution that would dismiss the Community's bill on condemnation, leading to the bill's withdrawal.³⁹

July 21, 1998: The President of the State issues Executive Order No. 22008, recognizing the Community as a legal entity.⁴⁰

October 23, 1998: Roswell and Kansol's representatives file a brief with the IBR requesting that case No. 7597/91 be closed and sent to the Court of First Instance, Fourth Rotation to remove the preliminary injunctions against Roswell and Kansol.⁴¹

December 3, 1998: After reviewing comments from INDI supporting the Community's claim for their ancestral lands and the Community's brief opposing Roswell and Kansol's brief, the IBR issues report No. 2065, stating that while it recognizes the exploitation of the Community's ancestral lands, it cannot take the land from Roswell and Kansol.⁴²

June 15, 1999: The IBR issues resolution No. 170, stating that it does not have the power to "condemn or negotiate the purchase" of land by any indigenous community; that power lies with INDI.⁴³ The IBR decides to end its administrative case and to send case No. 7597/91 to INDI so that a "legally appropriate" solution can be reached.⁴⁴

37. *Id.* ¶ 73(14).

38. *Id.* ¶ 73(15).

39. *Sahyoyamaya Indigenous Community v. Paraguay, Merits, Reparations and Costs*, ¶ 73(49).

40. *Id.* ¶ 73(15).

41. *Id.* ¶ 73(40).

42. *Id.* ¶ 73(43).

43. *Id.* ¶ 73(44).

44. *Id.*

June 23, 1999: The President of the State issues Executive Order No. 3789, recognizing the Community to be in a “state of emergency.”⁴⁵ The Order explains that the Community has been prevented from accessing its “traditional means of subsistence tied to [its] cultural identity,” leading to inadequate nutrition and medical attention for its members.⁴⁶

June 25, 1999: The Community’s leaders, with a senator’s support, propose a new bill of condemnation regarding an area of 14,404 hectares owned by Roswell and Kansol, justifying the condemnation on the grounds that it is the social interest of the Community.⁴⁷

July 13, 1999: The Community files a brief with INDI asking to meet with Roswell and Kansol and discuss negotiations, but it receives no response.⁴⁸

Between March 15, 2000 and September 9, 2002: INDI visits the Community’s settlements to bring food, medicine, and school supplies, and to help to register indigenous children and other people with the Registry of Civil Status.⁴⁹

September 27, 2000: The Committee for Agrarian Reform and Rural Welfare of the Senate of the National Congress presents a report supporting the Community’s condemnation bill after receiving a request from the Community’s leaders to issue a positive report.⁵⁰

November 16, 2000: The Senate of the National Congress dismisses the Community’s condemnation bill.⁵¹

May 15, 2001: TierraViva a los Pueblos Indígenas del Chaco (“TierraViva”), a non-governmental organization, submits the initial petition

45. *Sawhoyamaxa Indigenous Community v. Paraguay*, Merits, Reparations and Costs, ¶ 73(62).

46. *Id.* ¶ 73(63).

47. *Id.* ¶ 73(50).

48. *Id.* ¶¶ 73(44)–(45).

49. *Id.* ¶ 73(65).

50. *Id.* ¶¶ 73(51)–(52).

51. *Sawhoyamaxa Indigenous Community v. Paraguay*, Merits, Reparations and Costs, ¶ 73(54).

to the Inter-American Commission.⁵²

June 13, 2003: INDI asks the Court of First Instance in Civil and Business Law, Seventh Rotation (“Court of First Instance, Seventh Rotation”), for a preliminary injunction and a *lis pendens* on Roswell and Kansol’s property after receiving a request from the Community’s representatives to protect the land from further deforestation.⁵³

July 23, 2003: The Court of First Instance, Seventh Rotation asks the General Director of the Public Registries to issue an injunction on the land.⁵⁴

B. Other Relevant Facts

While living on estates in the Chaco, members of the Sawhoyamaxa Community face severe poverty, inadequate medical attention, bad health conditions, exploitation in the workplace, restrictions on crop and cattle ownership, and the inability to carry out their “traditional subsistence activities.”⁵⁵ This worsens when leaders of the Community try to formally reclaim their ancestral lands.⁵⁶ As a result, the majority of the members of the Community leave the estates to live on a national road “in extreme poverty, without any type of services.”⁵⁷ Without access to their ancestral lands, the Community’s members cannot fish, hunt, or gather, do not have access to drinking water, and cannot grow their traditional crops.⁵⁸

The roadside settlements, known as Santa Elisa and KM 16, have forty-nine dwellings, most without electricity or latrines.⁵⁹ The water supply comes from wells that are also used by animals, and during periods of drought water is limited.⁶⁰ Santa Elisa has a school for Community children, but it contains inadequate materials; children in KM 16

52. *Id.* ¶ 5.

53. Sawhoyamaxa Indigenous Community v. Paraguay, Merits, Reparations and Costs, ¶¶ 73(58)–(59).

54. *Id.* ¶ 73(60).

55. *Id.* ¶ 73(61).

56. *Id.*

57. Sawhoyamaxa Indigenous Community v. Paraguay, Merits, Reparations and Costs, ¶ 73(62).

58. *Id.* ¶ 73(64).

59. *Id.* ¶ 73(68).

60. *Id.* ¶ 73(69).

must attend a non-indigenous school.⁶¹ The nearest medical facility for the Community is forty-six kilometers away, and it is too expensive for most Community members to travel to the facility and pay for medicines prescribed after treatment.⁶² Furthermore, Community members face difficulties in registering births, deaths, and changes in civil status, along with getting identification documents.

These deficiencies leave Community members, especially children and the elderly, more susceptible to injuries and diseases such as pneumonia, measles, and dehydration. Specific individuals who have died because of these treatable conditions include: Mr. Antonio Alvarenga, Mr. Esteban Jorge Alvarenga, Ms. Lucía Aponte, Mr. Eusebio Ayala, Mr. Diego Andrés Ayala, Ms. Francisca Britez, Mr. Eduardo Cáceres, Mr. Eulalio Cáceres, Mr. Marcos Chávez, Ms. Sandra Elizabeth Chávez, Ms. Silvia Adela Chávez, Mr. Pedro Fernández, Ms. Ramona Flores, Mr. Arnaldo Galarza, Ms. Fátima Galarza, the Galarza family's one-month-old son, Mr. Antonio González, Mr. Juan Ramón González, Mr. Teresio González, Mr. Wilfredo González, the González family's thirteen-day-old son, Mr. Esteban González Aponte, Mr. González Aponte's three-month-old daughter, Ms. Rosana López, Mr. Guido Ruiz Díaz, Ms. Jenny Toledo, Mr. Derlis Armando Torres, Mr. Torres's three-day-old daughter, Mr. Luis Torres Chávez, and the Yegros family's eight-month-old son.⁶³ As of 2006, the Community is made up of 407 members in around eighty-three dwellings.⁶⁴

II. PROCEDURAL HISTORY

A. Before the Commission

May 15, 2001: TierraViva files a petition on behalf of the Community with the Commission, alleging the State violated the rights of members of the Community.⁶⁵

February 20, 2003: The Commission issues Admissibility Report No. 12/03.⁶⁶

61. *Id.* ¶ 73(71).

62. *Id.* ¶ 73(72).

63. *Sawhoyamaxa Indigenous Community v. Paraguay, Merits, Reparations and Costs*, ¶ 73(74).

64. *Id.* ¶ 73(8).

65. *Id.* ¶ 5.

66. *Sawhoyamaxa Indigenous Community v. Paraguay, Admissibility Report, Report No.*

October 19, 2004: The Commission issues Report on Merits No. 73/04.⁶⁷ It recommends that the State enforce the Community's property rights to its ancestral territory by officially demarcating the territory's limits and conveying title to the Community so that the Community may carry out its "traditional subsistence activities."⁶⁸ Until this happens, the State should protect the territory from any "irreparable harm."⁶⁹ The State should correct the Community's medical and nutritional issues through measures like Executive Order No. 3789/99.⁷⁰ For Paraguayan indigenous communities in general, the State should provide effective remedies to allow these communities to protect and access their ancestral lands.⁷¹ The State should also "publicly acknowledge international responsibility" for violating the Community's human rights in a public ceremony, and make both communal and individual reparations for the consequences that resulted from the State's human rights violations.⁷² Finally, the State should take adequate measures to keep anything like this from happening again.⁷³

B. Before the Court

February 3, 2005: The Commission submits the case to the Court after the State failed to adopt its recommendations.⁷⁴

1. Violations Alleged by Commission⁷⁵

Article 4(1) (Prohibition of Arbitrary Deprivation of Life)

Article 5 (Right to Humane Treatment)

Article 8 (Right to a Fair Trial)

Article 21 (Right to Property)

12/03, Inter-Am. Comm'n H.R., Case No. 12.419 (Feb. 20, 2003).

67. Sawhoyamaxa Indigenous Community v. Paraguay, Merits, Reparations and Costs, ¶ 8.

68. *Id.* ¶ 8(1).

69. *Id.* ¶ 8(3).

70. *Id.* ¶ 8(2).

71. *Id.* ¶ 8(4).

72. *Id.* ¶¶ 8(5)–(6).

73. Sawhoyamaxa Indigenous Community v. Paraguay, Merits, Reparations and Costs, ¶ 8(7).

74. Sawhoyamaxa Indigenous Community v. Paraguay, Petition to the Court, Inter-Am. Comm'n H.R., Case No. 12.419 (Feb. 2, 2005).

75. Sawhoyamaxa Indigenous Community v. Paraguay, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 146, ¶ 2 (Mar. 29, 2006).

Article 25 (Right to Judicial Protection)

all in relation to:

Article 1(1) (Obligation of Non-Discrimination)

Article 2 (Obligation to Give Domestic Legal Effect to Rights) of the American Convention.

2. Violations Alleged by Representatives of the Victims⁷⁶

Same Violations Alleged by Commission.

June 15, 2005: The Court refuses to appoint Mr. Ramón Fogel as an *ad hoc* Judge as requested by the State, since the State did not act in a timely manner.⁷⁷

III. MERITS

A. *Composition of the Court*⁷⁸

Sergio García Ramírez, President
Alirio Abreu Burelli, Vice President
Oliver Jackman, Judge
Antônio A. Cançado Trindade, Judge
Cecilia Medina Quiroga, Judge
Manuel E. Ventura Robles, Judge
Diego García-Sayán, Judge

Pablo Saavedra Alessandri, Secretary

B. *Decision on the Merits*

March 29, 2006: The Court issues its Judgment on Merits, Reparations and Costs.⁷⁹

The Court found unanimously that Paraguay had violated:

76. TierraViva served as representative of the victims. *Id.* ¶ 10.

77. *Id.* ¶ 15.

78. The Deputy Secretary of the Court, Emilia Segares Rodríguez, did not participate in the Judgment due to reasons beyond her control. *Id.* n.**.

79. *Sawhoyamaxa Indigenous Community v. Paraguay*, Merits, Reparations and Costs.

Article 8 (Right to a Fair Trial) and Article 25 (Right to Judicial Protection), in relation to Articles 1(1) and 2 of the Convention, to the detriment of the members of the Community,⁸⁰ because:

*State Law No. 904/81 states that petitions to recognize legal personality filed with INDI should be decided within a maximum of thirty days and registered through an executive order in the Indigenous Communities National Registry.*⁸¹ *The Community filed its petition with INDI on September 7, 1993, and an executive order registering its legal personality was not issued until July 21, 1998.*⁸² *Since it took four years, ten months, and fourteen days to complete these usually simple administrative proceedings, the Court found that this violated the Community's right to be heard within a reasonable time under Article 8 (Right to a Fair Trial) of the Convention.*⁸³

*For the Community's land claim proceedings, thirteen years had passed since the State recognized the Court's contentious competence without any resolution because INDI and the IBR continually passed the case back and forth without taking any meaningful action.*⁸⁴ *As such, the Court determined this length of time to be unreasonable in terms of the Community's right to a fair trial.*⁸⁵

*Further, the Court found that the administrative proceedings were ineffective for three significant reasons.*⁸⁶ *First, domestic laws only analyzed whether the claimed lands were "rationally exploited" without considering the land's context to the indigenous community.*⁸⁷ *Second, INDI can only compel negotiations for sale and resettlement, and cannot force compliance or establish penalties.*⁸⁸ *Finally, the State did not conduct adequate technical surveys of the land.*⁸⁹ *As such, the proceedings were and are ineffective in giving the Community the chance to re-*

80. *Id.* ¶ 248(1).

81. *Id.* ¶ 87.

82. *Id.* ¶ 88.

83. *Id.* ¶¶ 88–89.

84. *Id.* ¶¶ 95–96.

85. *Id.* ¶ 97.

86. *Sawhoyamaya Indigenous Community v. Paraguay, Merits, Reparations and Costs*, ¶ 104.

87. *Id.*

88. *Id.* ¶ 106.

89. *Id.* ¶ 107.

*turn to its ancestral lands.*⁹⁰

*The Court concluded that the State must provide adequate procedures for indigenous peoples to claim their ancestral lands through a competent authority, and these claims must be processed in a timely manner.*⁹¹ *This must be reflected in the State's domestic laws.*⁹² *Since the State has not provided effective or timely proceedings here, the Court concluded that the State violated Articles 8 (Right to a Fair Trial) and 25 (Right to Judicial Protection) of the Convention.*⁹³

Article 21 (Right to Property), in relation to Articles 1(1) and 2 of the Convention, to the detriment of the members of the Community,⁹⁴ because:

*The Court considered three issues to determine the Community's property rights: (1) if possession is required to grant the Community title, (2) whether the Community's request for property rights is time barred, and (3) whether the State must enforce the Community's right to the property.*⁹⁵ *For the first issue, the Court found that State Law No. 904/81 does not require indigenous communities to possess the land in order to claim restitution and regain title.*⁹⁶ *For the second issue, the Court determined that indigenous communities have an indefinite right to their ancestral lands as long as some kind of spiritual or material relationship exists with the land.*⁹⁷ *For the Community, its spiritual relationship with the land was manifest in its practice of "traditional activities" like hunting and gathering, even though there were hindrances to the practice of such traditions.*⁹⁸ *Based on this, the Community may still claim its right to the land irrespective of the passage of time. Finally, in light of these findings, the Court concluded that the State cannot sufficiently justify its non-enforcement of the Community's right to property and*

90. *Id.* ¶ 108.

91. *Id.* ¶ 109.

92. *Sawhoyamaxa Indigenous Community v. Paraguay, Merits, Reparations and Costs*, ¶ 110.

93. *Id.* ¶ 112.

94. *Id.* ¶ 248(2).

95. *Id.* ¶ 126.

96. *Id.* ¶¶ 129–30.

97. *Id.* ¶ 131.

98. *Sawhoyamaxa Indigenous Community v. Paraguay, Merits, Reparations and Costs*, ¶¶ 132–33.

thus is in violation of Article 21 (Right to Property) of the Convention.⁹⁹

Article 4(1) (Prohibition of Arbitrary Deprivation of Life) in relation to Articles 1(1) and 19 (Rights of the Child) of the Convention, to the detriment of the members of the Community,¹⁰⁰ because:

The Court determined that the State had knowledge of the precarious situation of the Community starting in 1997, especially for the children, elderly, and pregnant women.¹⁰¹ Knowing that Community members left the estates as a result of dangerous physical and labor conditions, the State had a responsibility to remove the Community members from living on the roadside and reduce the risks related to living in such a situation until they could return to their ancestral lands.¹⁰² Further, since the Community members lived in such vulnerable conditions, they experienced high levels of “unemployment, illiteracy, morbidity rates caused by evitable illnesses, malnutrition, . . . limitations to access and use health services and drinking water, . . . and marginalization.”¹⁰³ Even though all of this was reported to the State, it did not take any action to improve these conditions, thus violating the Community members’ right to life.¹⁰⁴ Even after the Community was declared to be in a state of emergency in 1999, the relief offered by the State was inadequate to fix the Community’s vulnerabilities.¹⁰⁵ Most of the Community members who died during this time perished from “reasonably foreseeable diseases that can be prevented and treated at a low cost.”¹⁰⁶ This occurred because members had difficulties reaching the available health care centers and were unable to pay for the costs of medicine.¹⁰⁷ Even if members were able to make it to a health center, the care was either inadequate or untimely.¹⁰⁸ Regarding Article 19 (Rights of the Child), eighteen Community members that died during the period were children, and their deaths can be attributed to the State’s lack of preventa-

99. *Id.* ¶¶ 141, 144.

100. *Id.* ¶ 248(3).

101. *Id.* ¶ 159.

102. *Id.* ¶¶ 163, 164.

103. *Id.* ¶ 168.

104. *Sahoyamaya Indigenous Community v. Paraguay, Merits, Reparations and Costs*, ¶ 169.

105. *Id.* ¶ 170.

106. *Id.* ¶ 171.

107. *Id.* ¶ 174.

108. *Id.* ¶ 175.

*tive measures to ensure the right to life.*¹⁰⁹ *Therefore, the State violated the Community members' right to life under Article 4(1) (Prohibition of Arbitrary Deprivation of Life).*¹¹⁰

Article 3 (Right to Juridical Personality) in relation to Article 1(1) of the Convention, to the detriment of Esteban Jorge Alvarenga, Diego Andrés Ayala, Francisca Britez, Eduardo Cáceres, Eulalio Cáceres, Silvia Adela Chávez, the one-month-old Galarza boy, Arnaldo Galarza, Fátima Galarza, the thirteen-days-old González boy, Juan Ramón González, the three-months-old González Aponte girl, Esteban González Aponte, Rosana López, Guido Ruiz Díaz, Jenny Toledo, Derlis Armando Torres, Mr. Torres Chávez, and the eight-months-old Yegros boy,¹¹¹ because:

*The Court determined that the State violated the victims' right to juridical personality because it did not provide adequate, accessible mechanisms for birth registration and identification documents.*¹¹² *Eighteen out of the nineteen victims died without any birth or death records, or identification documents.*¹¹³ *Further, the Community's location and living conditions made registration extremely inaccessible for the victims.*¹¹⁴ *As such, the State violated the victims' right to legal personality under Article 3 (Right to Juridical Personality).*¹¹⁵

The Court did not rule on:

Article 5 (Right to Humane Treatment), in relation to Article 1(1) of the Convention,¹¹⁶ because:

The Court determined that because it analyzed the issues regarding inhumane treatment of Community members under Article 4(1) (Prohibition of Arbitrary Deprivation of Life), it did not need to be readdressed

109. *Id.* ¶¶ 177–78.

110. *Sawhoyamaxa Indigenous Community v. Paraguay, Merits, Reparations and Costs*, ¶¶ 177–78.

111. *Id.* ¶ 248(5).

112. *Id.* ¶ 193.

113. *Id.* ¶ 190.

114. *Id.* ¶ 191.

115. *Id.* ¶ 194.

116. *Sawhoyamaxa Indigenous Community v. Paraguay, Merits, Reparations and Costs*, ¶ 248(4).

under Article 5 (Right to Humane Treatment).¹¹⁷

C. Dissenting and Concurring Opinions

1. Separate Opinion of Judge Manuel E. Ventura Robles

In a separate opinion, Judge Ventura Robles expressed his earnest approval of the Court's decision to find a violation of Article 4(1) (Prohibition of Arbitrary Deprivation of Life) of the Convention since the Court failed to find such a violation in the factually similar case of *Indigenous Community Yakye Axa v. Paraguay*.¹¹⁸ Judge Ventura Robles saw this decision as a step in the right direction to hold the State responsible for the deaths of Community members, which was the result of detrimental living conditions caused by not having access to ancestral lands.¹¹⁹

Judge Ventura Robles did not believe that the right to life should be interpreted as restrictively as it was in the *Yakye Axa* case since the right to life serves as the foundation for all other human rights.¹²⁰ As such, he felt the need to write separately to ensure that the right to life is interpreted broadly in the future.¹²¹

2. Separate Opinion by Judge Antônio A. Cançado Trindade

In a separate opinion, Judge Cançado Trindade discussed the fundamental right to life, the right to cultural identity, forced internal displacement, lack of due diligence on the part of the State, and the rights of indigenous peoples generally.¹²²

Regarding the right to life, Judge Cançado Trindade believed that its scope should be interpreted widely to provide conditions that allow a life with dignity.¹²³ Judge Cançado Trindade highlighted that the Com-

117. *Id.* ¶ 185.

118. *Sawhoyamaxa Indigenous Community v. Paraguay*, Merits, Reparations and Costs, Separate Opinion of Judge Manuel E. Ventura Robles, Inter-Am. Ct. H.R. (ser. C) No. 146, ¶ 1 (Mar. 29, 2006).

119. *Sawhoyamaxa Indigenous Community v. Paraguay*, Separate Opinion of Judge Manuel E. Ventura Robles, ¶¶ 1–2.

120. *Id.* ¶ 11.

121. *Id.* ¶ 15.

122. *Sawhoyamaxa Indigenous Community v. Paraguay*, Merits, Reparations and Costs, Separate Opinion of Judge Antônio A. Cançado Trindade, Inter-Am. Ct. H.R. (ser. C) No. 146, ¶ 1 (Mar. 29, 2006).

123. *Id.* ¶ 2.

munity members' right to life was violated directly by the conditions in which they were forced to live.¹²⁴ This is causally connected to the State's "lack of due diligence" regarding the Community's living conditions.¹²⁵ Regarding the right to cultural identity, Judge Caçado Trindade emphasized the importance of ancestral land in an indigenous community's culture.¹²⁶ When an indigenous community is deprived of ancestral lands, it is detrimental to its cultural identity.¹²⁷

For forced internal displacement, Judge Caçado Trindade pointed out that this practice is a violation of human rights since it leaves people in vulnerable situations when the State fails to provide enough support to these peoples.¹²⁸ Forced displacement should not happen in a way that violates the right to life, dignity, freedom, or security since the simple act of displacement does not take away a person's inherent rights.¹²⁹ In terms of the proceedings, Judge Caçado Trindade affirmed the Community's legal capability to bring a case as an indigenous community when many innocent people have been silenced in the past.¹³⁰ It has provided a voice to the "forgotten and the abandoned people of the world, surviving in the direst of circumstances."¹³¹

3. Separate Opinion by Judge Sergio García Ramírez

In a separate opinion, Judge García Ramírez discussed the case's procedural matters, land claims, the right to life, and recognition of juridical personality. Judge García Ramírez pointed out that the right to justice is an important fundamental right as a "gateway to the defense of all rights."¹³² Indigenous peoples tend to experience delayed justice the most, and do not have property rights to their land.¹³³ Considering these factors, the Court determined the legal proceedings the Community re-

124. *Id.* ¶ 24.

125. *Id.* ¶ 25.

126. *Id.* ¶ 3.

127. *Id.* ¶ 28.

128. *Id.* ¶ 14.

129. *Sawhoyamaxa Indigenous Community v. Paraguay*, Separate Opinion of Judge Antônio A. Caçado Trindade, ¶ 14.

130. *Id.* ¶ 57.

131. *Id.* ¶ 66.

132. *Sawhoyamaxa Indigenous Community v. Paraguay*, Merits, Reparations and Costs, Separate Opinion of Judge Sergio García Ramírez, Inter-Am. Ct. H.R. (ser. C) No. 146, ¶¶ 1–2 (Mar. 29, 2006).

133. *Id.* ¶ 5.

ceived were ineffective and below acceptable standards.¹³⁴

For the land claims, Judge García Ramírez felt it was important to note the term “property” in this instance had unique characteristics based on the indigenous characteristic of ownership, and thus should not be put on the same level as in civil law.¹³⁵ As for the right to life, Judge García Ramírez noted that the Court’s decisions lately are shifting the focus of this right to involve guaranteeing a “decent existence.”¹³⁶ It is the State’s responsibility to protect people’s rights and their well-being, and it must fulfill these duties.¹³⁷ Finally, regarding juridical personality, the concept of a person and personality allows access to the legal system, and that right must be protected by the State.¹³⁸

IV. REPARATIONS

The Court ruled unanimously that the State had the following obligations:

A. Specific Performance (Measures of Satisfaction and Non-Repitition Guarantee)

1. Ensure Restitution of Traditional Lands

The Court ordered the State to take all measures, legislative or administrative, to guarantee the Community’s rights to own, use, and enjoy its ancestral lands.¹³⁹ Since the lands are currently under private ownership, the State must look into purchasing or condemning the land.¹⁴⁰ If this is not possible, the State must find alternative lands that the Community finds suitable.¹⁴¹

134. *Id.* ¶ 9.

135. *Id.* ¶ 16.

136. *Id.* ¶ 18.

137. *Id.* ¶¶ 19–20.

138. *Sawhoyamaya Indigenous Community v. Paraguay*, Separate Opinion of Judge Sergio García Ramírez, ¶¶ 25–26.

139. *Sawhoyamaya Indigenous Community v. Paraguay*, Merits, Reparations and Costs, ¶ 210.

140. *Id.* ¶¶ 211–12.

141. *Id.* ¶ 212.

2. Provide Basic Services

Until the Community receives its land, the State must provide sufficient drinking water, medical care, food, schooling, and sanitation.¹⁴² The State must also establish a registration and documentation program for Community members to receive identification documents.¹⁴³ Finally, the State must provide the Community with both a communication system for medical emergencies and transportation to get assistance.¹⁴⁴

3. Adopt Domestic Legislation

The State must adopt domestic legislation to provide effective methods for indigenous peoples to claim their traditional lands and enforce property rights.¹⁴⁵

4. Publish the Judgment

The Court ordered the State to publish paragraphs 73(1)–(75) and operative paragraphs one through fourteen of the Judgment in the Official Gazette and a daily newspaper, as well as to broadcast the Judgment on a radio station accessible to the Community “at least four times in two-week intervals.”¹⁴⁶

B. Compensation

The Court awarded the following amounts:

1. Pecuniary Damages

Since the Community had to go to great lengths to contact government authorities in making their domestic claims for land restitution, the Court awarded \$5,000 to the Community.¹⁴⁷

142. *Id.* ¶ 230.

143. *Id.* ¶ 231.

144. *Id.* ¶ 232.

145. *Sawhoyamaxa Indigenous Community v. Paraguay, Merits, Reparations and Costs*, ¶ 235.

146. *Id.* ¶ 236.

147. *Id.* ¶¶ 217–18.

2. Non-Pecuniary Damages

The Court awarded non-pecuniary damages for the victims' pain and suffering and changed living conditions.¹⁴⁸ When determining non-pecuniary damages, the Court considered the Community members' detrimental living conditions outside their ancestral lands and the detriment to their cultural identity and values.¹⁴⁹ As such, the State must create a project to develop the ancestral lands and a community development fund of \$1,000,000.¹⁵⁰ The fund should be used for education, housing, health, agricultural, drinking water, and sanitation projects.¹⁵¹ An implementation committee made up of a representative for the victims, a representative of the State, and one other representative mutually agreed to by the victims and the State is to make the decisions about the fund.¹⁵²

Also, the State must award \$20,000 each to the next of kin of Esteban Jorge Alvarenga, Diego Andrés Ayala, Francisca Britez, Eduardo Cáceres, Eulalio Cáceres, Silvia Adela Chávez, Arnaldo Galarza, Fátima Galarza, the Galarzas' one-month-old son, Juan Ramón González, Mr. Gonzalez's thirteen-day-old son, Esteban González Aponte, Mr. González Aponte's three-month-old daughter, Rosana López, Guido Ruiz Díaz, Jenny Toledo, Derlis Armando Torres, Mr. Torres Chávez, and the Yegros family's eight-month-old son.¹⁵³ The money should be "distributed among the next of kin of the victims pursuant to the cultural practices of the Sawhoyamaxa Community."¹⁵⁴

3. Costs and Expenses

The Court awarded the Community \$5,000 for the expenses incurred during domestic proceedings and proceedings before the Court.¹⁵⁵ The Community will distribute a portion of these funds to TierraViva as it sees fit.¹⁵⁶

148. *Id.* ¶ 219.

149. *Id.* ¶ 221.

150. *Id.* ¶¶ 223–24.

151. *Sawhoyamaxa Indigenous Community v. Paraguay, Merits, Reparations and Costs*, ¶ 224.

152. *Id.* ¶ 225.

153. *Id.* ¶¶ 226–27.

154. *Id.* ¶ 226.

155. *Id.* ¶ 238.

156. *Id.* ¶ 232.

4. Total Compensation (including Costs and Expenses ordered):

\$ 1,390,000.00

C. Deadlines

The State must give the Community the right to its ancestral lands or alternative lands approved by the Community within three years.¹⁵⁷

The State must provide the Community with basic services within six months and until it provides land to the Community.¹⁵⁸

The State must adopt domestic legislation within a reasonable period of time.¹⁵⁹ Also, the State shall establish mechanisms for claims to ancestral lands for indigenous peoples within a reasonable period of time.¹⁶⁰

The State must establish the community development fund within two years of providing the Community with lands, and it must choose the implementation committee members within six months after notice of the Judgment.¹⁶¹

The State shall pay damages, costs, and expenses, publish and broadcast portions of the Judgment, and create a program to register Community members all within one year.¹⁶² The communication system for emergencies should be put in place within six months.¹⁶³

V. INTERPRETATION AND REVISION OF JUDGMENT

[None]

VI. COMPLIANCE AND FOLLOW-UP

February 2, 2007: The Court determined that the State had not complied with portions of the Judgment and thus must keep open procedures

157. *Id.* ¶ 215.

158. *Sawhoyamaxa Indigenous Community v. Paraguay, Merits, Reparations and Costs*, ¶ 232.

159. *Id.* ¶ 241.

160. *Id.* “Operative Paragraphs” ¶ 12.

161. *Id.* ¶¶ 224–25.

162. *Id.* ¶ 239.

163. *Id.* “Operative Paragraphs” ¶ 10.

to monitor compliance.¹⁶⁴ Since notice of the Judgment, the Community's vulnerable situation has continued, leading to the death of four people.¹⁶⁵ The Court required the State to provide basic goods, services, and medical attention to the Community as soon as possible so unnecessary deaths do not continue.¹⁶⁶ The State must also immediately provide an emergency communication system to the Community.¹⁶⁷ For the rest of its obligations in the Judgment, the State must report on the reparations to the Court.¹⁶⁸

February 8, 2008: The Court determined that the State complied fully with establishing a communication system for the Community.¹⁶⁹ The State has partially complied with payment, the registration program, and publishing the Judgment.¹⁷⁰ The Court will continue monitoring compliance with the other portions of the Judgment.¹⁷¹

VII. LIST OF DOCUMENTS

A. *Inter-American Court*

1. Preliminary Objections

[None]

2. Decisions on Merits, Reparations and Costs

[Sawhoyamaxa Indigenous Community v. Paraguay, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. \(ser. C\) No. 146 \(Mar. 29, 2006\).](#)

[Sawhoyamaxa Indigenous Community v. Paraguay, Merits, Reparations and Costs, Separate Opinion of Judge Manuel E. Ventura Robles, Inter-](#)

164. Sawhoyamaxa Indigenous Community v. Paraguay, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R. "Declares" ¶ 1 (Feb. 2, 2007).

165. Sawhoyamaxa Indigenous Community v. Paraguay, Monitoring Compliance with Judgment, Order of the Court, "Declares" ¶¶ 6, 11 (Feb. 2, 2007).

166. *Id.* "And Decides" ¶ 1.

167. *Id.* "And Decides" ¶ 2.

168. *Id.* "And Decides" ¶¶ 4–5.

169. *Id.* "Declares" ¶ 1, "Considering" ¶ 36.

170. *Id.* "Declares" ¶ 2.

171. Sawhoyamaxa Indigenous Community v. Paraguay, Monitoring Compliance with Judgment, Order of the Court, "Declares" ¶ 4 (Feb. 2, 2007).

[Am. Ct. H.R. \(ser. C\) No. 146 \(Mar. 29, 2006\).](#)

[Sawhoyamaxa Indigenous Community v. Paraguay, Merits, Reparations and Costs, Separate Opinion of Judge Antônio A. Cançado Trindade, Inter-Am. Ct. H.R. \(ser. C\) No. 146 \(Mar. 29, 2006\).](#)

[Sawhoyamaxa Indigenous Community v. Paraguay, Merits, Reparations and Costs, Separate Opinion of Judge Sergio García Ramírez, Inter-Am. Ct. H.R. \(ser. C\) No. 146 \(Mar. 29, 2006\).](#)

3. Provisional Measures

[None]

4. Compliance Monitoring

[Sawhoyamaxa Indigenous Community v. Paraguay, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R. \(Feb. 2, 2007\).](#)

[Sawhoyamaxa Indigenous Community v. Paraguay, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R. \(Feb. 8, 2008\).](#)

5. Review and Interpretation of Judgment

[None]

B. Inter-American Commission

1. Petition to the Commission

Sawhoyamaxa Indigenous Community v. Paraguay, Petition No. 0322/2001, Inter-Am. Comm'n H.R. (May 15, 2001).

2. Report on Admissibility

[Sawhoyamaxa Indigenous Community v. Paraguay, Admissibility Report, Report No. 12/03, Inter-Am. Comm'n H.R., Case No. 12.419 \(Feb.](#)

[20, 2003\).](#)

3. Provisional Measures

[None]

4. Report on Merits

Sawhoyamaxa Indigenous Community v. Paraguay, Report on Merits, Report No. 73/04, Inter-Am. Comm'n H.R., Case No. 12.419 (Oct. 19, 2004).

5. Application to the Court

[Sawhoyamaxa Indigenous Community v. Paraguay, Petition to the Court, Inter-Am. Comm'n H.R., Case No. 12.419 \(Feb. 2, 2005\) \(Available only in Spanish\).](#)

VIII. BIBLIOGRAPHY

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