

Cases of the Indigenous Communities Yakye Axa, Sawhoyamxa, and Xákmok Kásek v. Paraguay

I. COMPLIANCE AND FOLLOW-UP¹

June 24, 2015: The Court held hearings to follow up on the State's compliance with rulings in three cases: the Yakye Axa Indigenous Communities, Sawhoyamxa, and Xákmok Kásek cases against Paraguay.² The Court found the State failed to guarantee indigenous communities the right to community property, and therefore, the State was required to “identif[y], deliver[], and titl[e]” the property back to the indigenous communities.³

Generally, the State provided information to the Court regarding the progress it made in its attempts to identify, demarcate, and title traditional lands back to the indigenous communities.⁴ This evidence typically consisted of negotiations for the acquisition of lands that the State initiated with the current titleholders, often corporations.⁵ In some cases, the State also implemented protective orders to prevent development of lands identified as belonging to the communities.⁶

The Court found that as of the date of the hearing, the State did not comply with its duty to return the traditional lands, or to provide a suitable alternative, to any of the indigenous communities.⁷ Furthermore, the Court noted the State removed money from the Court ordered fund created for the purpose of acquiring land back.⁸ Lastly, the

1. Raymond Chavez, Author; Shushan Khorozyan, Editor; Erin Gonzalez, Chief IACHR Editor; Cesare Romano, Faculty Advisor

2. Cases of the Indigenous Communities Yakye Axa, Sawhoyamxa, and Xákmok Kásek v. Paraguay, Monitoring Compliance with Judgment, Order of the President of the Court, Inter-Am. Ct. H.R. 1 (Jun. 24, 2015).

3. *Id.* ¶ 1.

4. *Id.* ¶ 30.

5. *Id.* ¶¶ 12, 30.

6. *Id.* ¶ 19.

7. *Id.* ¶¶ 16, 27, 36.

8. Cases of the Indigenous Communities Yakye Axa, Sawhoyamxa, and Xákmok Kásek v. Paraguay, Monitoring Compliance with Judgment, “Considering” ¶¶ 42-45

Court determined that the State failed to comply with its duty to return traditional lands, or supply adequate alternative lands, to the indigenous communities before the deadlines the Court originally set.⁹

The Court found the State failed in its obligation to return 10,700 hectares of land to the Xákmok Kásek community.¹⁰ The Court also determined that the State incurred a \$10,000.00 (USD) monthly fee owed to the Xákmok Kásek community as compensation for its breach of duty for every month past the initial deadline, until the State completes its obligation.¹¹ Currently, the State has incurred a \$90,000 (USD) fee, but the amount will continue to accrue until the obligations are met.¹² The Court did, however, determine that the State complied in part with its duty to remove obstacles that prevented the Xákmok Kásek community from gaining title to 1,500 hectares of land, since the community was granted legal status over the land.¹³ The Court resolved to keep open monitoring and compliance procedures in all cases to ensure the State complies with its duty to return the traditional lands to the indigenous communities.¹⁴ The Court ordered the State to adopt all measures necessary to comply with its duty, without delay.¹⁵ Finally, the Court ordered the State to submit a report on compliance no later than December 4, 2015, regarding its progress in all three cases.¹⁶

9. *Id.* ¶¶ 46-50.

10. *Id.* ¶ 36.

11. *Id.* ¶¶ 3, 49.

12. *Id.* ¶ 49.

13. *Id.* ¶ 39.

14. Cases of the Indigenous Communities Yakyé Axa, Sawhoyamxa, and Xákmok Kásek v. Paraguay, Monitoring Compliance with Judgment, “Resolves” ¶¶ 3.

15. *Id.* “Resolves” ¶ 4.

16. *Id.* “Resolves” ¶ 5.