

Yakye Axa Indigenous Community v. Paraguay

ABSTRACT¹

As the Sawhoyamaxa Indigenous Community v. Paraguay case, this case, too, is about the legal battle by a dispossessed 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 Sawhoyamaxa case, the Court found violations of several articles of the American Convention. However, it did not find violation of the right to life of those who died because of their poor living conditions.

I. FACTS

A. Chronology of Events

1907: W.B. Grubb founds the *Makxlawaya* Mission on lands traditionally inhabited by the Yakye Axa, one of several indigenous Lengua communities in the region, after the Paraguayan Chaco is parceled and sold to British entrepreneurs on the London Stock Exchange.²

1979: The Anglican Church of England initiates The Heritage (*La Herencia*) program to purchase State land for new indigenous settlements, including lands already settled and occupied by the Yakye Axa.³

1980-1985: The Heritage (*La Herencia*) program expands into three new settlements: *Sombrero Piri*, *La Patria*, and *El Estribo*.⁴

1986: Following instances of sexual exploitation, poor living condi-

1. Ushma Vyas, Author; Dale Ogden, Editor; Kathryn Benson, Chief IACHR Editor; Cesare Romano, Faculty Advisor.

2. Yakye Axa Indigenous Community v. Paraguay, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 125, ¶¶ 50.1, 50.10 (June 17, 2005).

3. *Id.* ¶¶ 50.12–50.13.

4. *Id.* ¶ 50.12.

tions, and meager wages at *Estancia Loma Verde*, some Yakye Axa members transfer to *Estancia El Estribo*.⁵ However, at *El Estribo*, the Community's crop yields plummet, livestock die, hunting wanes, and health deteriorates, killing many youth and elderly members.⁶

August 15, 1993: The Yakye Axa appoint Tomás Galeano Benítez and Esteban López Domínguez as its community leaders.⁷ The Yakye Axa leaders register with the Paraguayan Institute of Indigenous Peoples (*Instituto Paraguayo del Indígena*, "INDI"),⁸ the administrative body that resolves indigenous territorial issues alongside the *Instituto de Bienestar Rural* ("IBR").⁹

October 5, 1993: The Yakye Axa leaders write a letter to the IBR to assert the Community's right to return to its ancestral lands in the Chaco.¹⁰

March 3, 1994: The IBR requests that INDI submit evidentiary proof corroborating the Yakye Axa's land request.¹¹

February 8, 1995: With the IBR as its mediator, the Yakye Axa leaders propose to buy the lands from the current owners.¹²

December 11, 1995: INDI notifies the IBR that it has commissioned land inspections.¹³

1996: Some members of the Yakye Axa leave the *El Estribo* estate for the original lands of the Community's ancestors, but are rejected.¹⁴ Instead, they settle alongside the road connecting Pozo Colorado and Concepción while awaiting INDI's response.¹⁵ After settling, the Yakye Axa are constantly harassed and threatened.¹⁶ Meanwhile, the Yakye Axa struggle to fish, hunt, farm, and find work, given the poor land fer-

5. *Id.* ¶ 50.13.

6. *Id.* ¶ 50.15.

7. *Id.* ¶¶ 50.17–50.18.

8. *Id.*

9. *Id.* ¶¶ 50.19, 50.23.

10. *Id.* ¶ 50.24.

11. *Id.* ¶ 50.25.

12. *Id.* ¶ 50.28.

13. *Id.* ¶ 50.29.

14. *Id.* ¶ 50.92.

15. *Id.*

16. *Id.* ¶ 50.91.

tility and limited access to clean water.¹⁷

May 27, 1996: The IBR notifies the Florida Agricultural Corporation, Livestock Capital Group Inc., and Agricultural Development Inc. (collectively “owners”) of the *Loma Verde* and *Maroma* estates about the Yakye Axa’s land claims and proposal for purchase.¹⁸

July 25, 1996: The IBR orders an inspection of the *Loma Verde* and *Maroma* estates.¹⁹

September 18, 1996: INDI recognizes Mr. Galeano Benítez and Mr. López Domínguez as the Yakye Axa’s leaders.²⁰

March 3, 1997: The Yakye Axa leaders file a writ of *amparo* to contest restrictions on the Community’s land use, access, and harassment, noting that it is dependent on these lands for subsistence.²¹

April 17, 1997: The Civil and Commercial Trial Court (“civil court”) dismisses the *amparo* suit because the statute of limitations is expired.²²

May 28, 1997: On appeal, the appellate court upholds the civil court’s dismissal of the *amparo* suit.²³ Meanwhile, INDI asks the Yakye Axa leaders for clarity on the precise location of their land and requests the Center for Anthropological Studies at the Catholic University of Our Lady of the Assumption (*Centro de Estudios Antropológicos de Unversidad Católica “Nuestra Señora de la Asunción”*) to perform an independent study on the Yakye Axa Community.²⁴

June 3, 1997: The Yakye Axa leaders clarify that the land claimed totals 18,188 hectares.²⁵

October 13, 1997: Counsel for the Yakye Axa request precautionary

17. *Id.* ¶ 50.93.

18. *Id.* ¶ 50.30.

19. *Id.* ¶ 50.31.

20. *Id.* ¶ 50.18.

21. *Id.* ¶ 50.62; see Adolfo S. Azcuna, *The Writ of Amparo: A Remedy to Enforce Fundamental Rights*, 37 ATENEO L.J. 15 (1993) (defining an *amparo* suit as a civil claim seeking protection against an unconstitutional governmental policy or act).

22. *Id.* ¶ 50.63.

23. *Id.* ¶ 50.64.

24. *Id.* ¶ 50.33.

25. *Id.* ¶ 50.34.

measures to prevent the property owners from altering traditional Yakye Axa lands.²⁶

November 26, 1997: The trial court grants the request, but the owners file a motion to lift the precautionary measures prohibiting them from developing the land.²⁷

April 13, 1998: The owners reject the report completed by the Center for Anthropological Studies and refuse to sell the land.²⁸

April 22, 1998: The owners file a criminal complaint against the Yakye Axa for repeatedly interfering with the property and request police security.²⁹

April 27, 1998: The trial court issues an interlocutory order to lift the precautionary measures.³⁰

May 21, 1998: The Yakye Axa leaders begin the procedure for acquiring legal status for the community before INDI.³¹

June 29, 1998: The Yakya Axa leaders file a constitutional motion before the Constitutional Chamber of the Supreme Court of Justice for the owners' failure to halt construction on the estates per the precautionary measures ordered on November 26, 1997.³²

July 3, 1998: The IBR determines that the disputed lands are the Yakye Axa Community's "territorial habitat" and that its claim predates both Paraguayan statehood and the private property title system.³³

November 26, 1998: The owners challenge a new report by INDI, which details the census of the Yakye Axa living on the Loma Verde estate and contains photos of the facilities.³⁴

26. *Id.* ¶ 50.65.

27. *Id.* ¶¶ 50.66–50.67.

28. *Id.* ¶ 50.35.

29. *Id.* ¶ 50.78.

30. *Id.* ¶ 50.68.

31. *Id.* ¶ 50.19.

32. *Id.* ¶ 50.71.

33. *Id.* ¶ 50.37.

34. *Id.* ¶¶ 50.40–50.41.

March 11, 1999: The Yakye Axa leaders file a complaint with the Public Prosecutor's Office, again requesting precautionary measures to prohibit construction on the Loma Verde estate.³⁵

March 16, 1999: Livestock Capital files a criminal complaint against the Yakye Axa for invasion of property, coercion, and theft.³⁶ The pre-trial proceedings begin promptly the next day, but the court fails to notify the Yakya Axa.³⁷

May 3, 1999: Oscar Ayala Amarilla intervenes as agent for the Yakye Axa.³⁸ Upon the owners' objection, the judge stays Mr. Amarilla's intervention until INDI reports whether the Community is registered with the institute.³⁹

July 1, 1999: The State Supreme Court dismisses the Yakye Axa's second *amparo* claim.⁴⁰

August 18, 1999: INDI declares the Yakye Axa to be in a general state of emergency and recommends that the owners negotiate a sale of the land.⁴¹

August 23, September 8, and September 22, 1999: The owners express their disinterest in negotiating any sale of their estates.⁴² In response, the Yakye Axa ask INDI to rule in their favor.⁴³

October 7 and December 3, 1999: The owners reiterate that they are disinterested in negotiating a sale.⁴⁴

November 5, 1999: The Yakye Axa leaders formally request that INDI acknowledge the community's legal status in a petition to the IBR.⁴⁵

February 3, 2000: The Community resubmits its request for legal status

35. *Id.* ¶ 50.76.

36. *Id.* ¶ 50.79.

37. *Id.*

38. *Id.* ¶ 50.81.

39. *Id.*

40. *Id.* ¶ 50.72.

41. *Id.* ¶ 50.42.

42. *Id.* ¶ 50.44.

43. *Id.* ¶ 50.45.

44. *Id.* ¶ 50.44.

45. *Id.*

to INDI.⁴⁶

May 23, 2000: INDI sends the Yakye Axa land claim petition to the IBR to issue a ruling.⁴⁷

June 5, 2000: The IBR returns INDI's request for ruling, stating that INDI failed to provide a definitive ruling on the Community's legal status and asking it to reopen negotiations with the landowners.⁴⁸

August 8, 2000: INDI's president denies the Yakye Axa legal status and reserves any standing issues before the IBR.⁴⁹ The Yakye Axa appeal but are quickly rejected.⁵⁰ Soon after, however, the INDI Board of Directors annul the president's decision.⁵¹

August 30, 2000: The trial court issues an order prohibiting the Yakye Axa from hunting, cutting trees, entering the Loma Verde estate, or even drinking water from the property.⁵²

September 5 and 11, 2000: Mr. Amarilla attempts once again to intervene on behalf of the Yakye Axa in the criminal proceedings but is denied.⁵³ The criminal court judge suggests Mr. Amarilla submit his request before INDI pursuant to the 1890 Criminal Procedures Code.⁵⁴ Instead, Mr. Amarilla appeals.⁵⁵

September 14, 2000: Given the delay in resolving the dispute, the Yakye Axa leaders propose that Congress legislatively expropriate certain lands for the Community.⁵⁶ In response, Congress members Sonia de León and Rafael Filizzola Serra express their willingness to draft such a bill.⁵⁷

October 20, 2000: Mirta Pereira Giménez resubmits the request for the

46. *Id.* ¶ 50.19, n.42.

47. *Id.* ¶ 50.46.

48. *Id.* ¶ 50.47.

49. *Id.* ¶ 50.49.

50. *Id.* ¶ 50.50.

51. *Id.* ¶ 50.51.

52. *Id.* ¶ 50.85.

53. *Id.* ¶ 50.86.

54. *Id.*

55. *Id.* ¶ 50.87.

56. *Id.* ¶ 50.54.

57. *Id.* ¶ 50.55.

Yakye Axa's legal status to INDI.⁵⁸

November 16, 2000: The Committee on Human Rights and Indigenous Affairs and the Committee on Rural Welfare reject the expropriation bill.⁵⁹ Likewise, Congresswoman León and Congressman Serra withdraw the bill after the Inter-American Commission on Human Rights initiates a friendly settlement between the parties.⁶⁰

December 29, 2000: INDI sends a letter to the owners demanding they sell 15,000 hectares to the Yakye Axa, but the letter is not deliverable.⁶¹

May 10, 2001: INDI approves the Yakye Axa's application for legal status and forwards the file to the Ministry of Education and Culture ("MEC") for final processing.⁶²

August 29, 2001: The trial judge orders the Yakye Axa's eviction from the public road and the dismantling of their homes, and INDI appeals the decision two weeks later.⁶³ However, the appellate court affirms the eviction.⁶⁴

October 3, 2001: INDI annexes 7,901 hectares of the owners' estate for the Yakye Axa.⁶⁵

October 25, 2001: The MEC Legal Director determines the Yakye Axa meet all legal criteria and recommends that the MEC grant legal status to the Yakye Axa Community.⁶⁶

November 2001: The IBR legal team annexes farmlands in the Pozo Colorado District in favor of the Yakye Axa following INDI's silence on the matter.⁶⁷

December 10, 2001: The President of the State recognizes the Yakya

58. *Id.*

59. *Id.* ¶ 50.56.

60. *Id.*

61. *Id.* ¶ 50.43.

62. *Id.* ¶ 50.20.

63. *Id.* ¶¶ 50.87–50.89.

64. *Id.* ¶ 50.89.

65. *Id.* ¶ 50.52.

66. *Id.* ¶ 50.21.

67. *Id.* ¶¶ 50.53–50.54.

Axa's legal status.⁶⁸

January 30, 2002: The President of the State and the Minister of Education and Culture pass a new expropriation bill reserving part of the disputed lands for the Yakye Axa.⁶⁹

May 13, 2002: Upon INDI's request, the trial court reissues the Community's original *amparo* suit and reinstates the precautionary measures requiring the owners to cease developing the disputed land.⁷⁰

June 27, 2002: After the Senate Committee on Agrarian Reform and Rural Welfare forwards the new expropriation bill for a vote, the Senate rejects it.⁷¹

August 23, 2002: The trial court judge again lifts the precautionary measures.⁷²

October 30, 2003: The Senate proposes a third expropriation bill granting the Yakye Axa a different parcel of the same land.⁷³ However, the Yakye Axa leaders reject the offer because they lacked Community members' express approval.⁷⁴ The following year, Law No. 2,425 grants the land to the Emha Solyaktama (Naranjaty) Indigenous Community.⁷⁵

B. Other Relevant Facts

The Yakye Axa peoples are a sect of the Southern Lengua Enxet and the larger Lengua-Maskoy indigenous peoples.⁷⁶ Although largely hunter-gatherers, the Yakye Axa also practice subsistence farming and raise livestock.⁷⁷ Prior to Spanish colonization in 1537, the Lengua-Maskoy freely roamed the vast Paraguayan Chaco from the western banks of the Paraguayan River into the forests of the Chaco Boreal, and

68. *Id.* ¶ 50.22.

69. *Id.* ¶ 50.58.

70. *Id.* ¶¶ 50.73–50.74.

71. *Id.* ¶ 50.59.

72. *Id.* ¶ 50.75.

73. *Id.* ¶ 50.60.

74. *Id.* ¶ 50.61.

75. *Id.*

76. *Id.* ¶ 50.1.

77. *Id.* ¶¶ 15, 50.1.

gave traditional Guaraní names to geographical landmarks.⁷⁸

II. PROCEDURAL FACTS

A. Before the Commission

January 10, 2000: Tierraviva a los Pueblos Indigenas del Chaco Paraguayo (“Tierraviva”) and the Center for Justice and International Law (“CEJIL”) file a petition with the Inter-American Commission on Human Rights on behalf of the Yakye Axa,⁷⁹ alleging violation of Article 25 (Right to Judicial Protection) of the American Convention.⁸⁰

February 27, 2002: The Commission adopts Admissibility Report No. 2/02.⁸¹

October 24, 2002: The Commission adopts Merits Report No. 67/02.⁸² The Commission recommends that the State: 1) take measures to grant property ownership of and return ancestral lands to the Yakye Axa Community, 2) guarantee the Yakye Axa Community’s ability to practice traditional subsistence activities, 3) end the state of emergency within the Yakye Axa Community, 4) protect the Yakye Axa Community lands while title ownership is pending, 5) guarantee a judicial remedy for claiming traditional ancestral lands, 6) make reparations to the Yakye Axa Community, and 7) prevent similar violations in the future.⁸³

B. Before the Court

March 17, 2003: The Commission submits the case to the Court after the State failed to adopt its recommendations.⁸⁴

78. *See id.*

79. *Id.* ¶ 5.

80. *Id.*

81. *Id.* ¶ 6.

82. *Id.* ¶ 7.

83. *Id.*

84. *Id.* ¶¶ 1, 10.

1. Violations Alleged By the Commission⁸⁵

Article 4 (Right to Life)

Article 8 (Right to a Fair Trial)

Article 21 (Rights to Property)

Article 25 (Right to Judicial Protection)

all in relation to:

Article 1 (Obligation to Respect Rights) of the American Convention.

2. Violations Alleged By Representatives of the Victims⁸⁶

Same Violations Alleged by Commission.

May 23, 2003: The State appoints Ramón Fogel Perdosó as judge *ad hoc*.⁸⁷

March 1, 2005: *Organización Nacional Indígena de Colombia* files an amicus curiae brief.⁸⁸

March 4 and 5, 2005: The Court holds a public hearing to hear witness testimony and oral arguments.⁸⁹

April 4, 2005: The parties submit their final written arguments.⁹⁰ The State alleges that the representatives failed to exhaust domestic remedies, that the existing domestic remedies are effective, and that any actions the representatives did take were inappropriate, untimely, or negligent.⁹¹

June 17, 2005: The Court dismisses the State's objection that the representatives failed to exhaust domestic remedies on the grounds that the State did not timely raise this objection at the appropriate stage of the proceedings.⁹² The Court further stated that the available domestic remedy before INDI and the IBR did not occur over a reasonable period

85. *Id.* ¶ 2. Jose Zalaquett, Santiago Canton, Isabel Madariaga, Ariel Dultizky, and Ignacio Alvarez serve as representatives of the Commission. *Id.* ¶ 10.

86. *Id.* ¶ 5. Tierraviva and CEJIL serve as representatives of the victims.

87. *Id.* ¶ 12.

88. *Id.* ¶ 19.

89. *Id.* ¶ 21.

90. *Id.* ¶ 23.

91. *Id.* ¶¶ 54(c), 90.

92. *Id.* ¶ 91.

of time as required by the Convention.⁹³ Moreover, the Court found that the available domestic remedy through INDI and the IBR was ineffective.⁹⁴

III. MERITS

A. Composition of the Court

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
Ramón Fogel Pedroso, Judge *Ad Hoc*

Pablo Saavedra Alessandri, Secretary
Emilia Segares Rodríguez, Deputy Secretary

B. Decision on the Merits

June 17, 2005: The Court issued its Judgment on Merits, Reparations and Costs.⁹⁵

The Court found unanimously that the State had violated:

Article 4(1) (Prohibition of Arbitrary Deprivation of Life) in relation to Article 1(1) and 2 of the Convention, to the detriment of the Yakye Axa Community,⁹⁶ because:

The right to life under Article 4 (Right to Life) obligates states to ensure decent living conditions so as not to interfere with individuals' access to a decent life.⁹⁷ In the present case, the State failed to meet its duty to protect the Yakye Axa's livelihood by not taking appropriate measures to secure their survival through traditional hunting, gathering, fishing,

93. *Id.* ¶ 97.

94. *Id.* ¶ 98.

95. *Yakye Axa Indigenous Community v. Paraguay, Merits, Reparations and Costs.*

96. *Id.* ¶ 176, "Operative Paragraphs" ¶ 3.

97. *Id.* ¶¶ 161–62.

and farming.⁹⁸

The Yakye Axa struggled through severely poor living conditions in their roadside settlements.⁹⁹ Without fertile lands and access to clean water, the community's health quickly deteriorated.¹⁰⁰ Beyond the effects on nutrition, medical treatment, and food subsistence, the Yakye Axa's identity was equally damaged by limitations on their rights to work, education, and human dignity.¹⁰¹ Despite the State's claim that it could not be liable for the poor conditions because the Yakye Axa voluntarily settled along the road, the Court explained that the settlements were merely a temporary solution pending their land claim.¹⁰² So, while the State may not be directly responsible for the conditions of the roadside settlements, it still had a duty to ensure the Community's right to life through decent medical care and sanitary conditions.¹⁰³

The Court further clarified that the State had a greater responsibility to protect the Community's children and elderly.¹⁰⁴ Under Article 19 (Rights of the Child) of the Convention, the State was obligated to act in the Yakye Axa children's best interest by protecting their basic needs and securing future opportunities.¹⁰⁵ Instead, many of the children suffered severe malnutrition, causing them to miss school.¹⁰⁶ Similarly in caring for the elderly, a State must undertake to provide adequate food, clean water, and health care.¹⁰⁷ Because the State failed to provide the Yakye Axa Community with minimum standards of living, the Court held that the State violated Article 4(1) (Prohibition of Arbitrary Deprivation of Life).¹⁰⁸

The Court found by seven votes to one that the State had violated:

Article 8 (Right to a Fair Trial) in relation to Article 1(1) and 2 of the Convention, to the detriment of the Yakye Axa Community,¹⁰⁹ be-

98. *Id.* ¶¶ 168, 176.

99. *Id.* ¶ 164.

100. *Id.* ¶ 167.

101. *Id.*

102. *Id.* ¶¶ 170–71.

103. *Id.*

104. *Id.* ¶ 172.

105. *Id.*

106. *Id.* ¶¶ 173–74.

107. *Id.* ¶ 175.

108. *Id.* ¶ 176.

109. *Id.* ¶¶ 104, 118.

cause:

The State failed to adequately represent the Yakye Axa's interests in domestic administrative and criminal proceedings.¹¹⁰ Article 8 (Right to a Fair Trial) of the Convention requires that defendants are tried before a "competent, independent and impartial tribunal" and are guaranteed certain protections.¹¹¹ Where the right to counsel allows defendants to appoint a representative at their own cost or receive a State-appointed attorney, the right to present a defense guarantees defendants' access to public records, admission of evidence, and the ability to cross-examine witnesses at trial.¹¹²

While the State constitution and criminal penal code uphold these same rights, the Yakye Axa were denied due process in a timely determination of their legal status and subsequent land claims.¹¹³ The Community was further refused its right to appoint its own defense, to know the criminal charges against its members, and to examine and offer witnesses during proceedings held in its absence.¹¹⁴ Not only did the State courts deny the Yakye Axa legal counsel for two and a half years, but they also hosted numerous criminal proceedings and authorized inspections against Community members without providing notice.¹¹⁵ For these reasons, the State violated Article 8 (Right to a Fair Trial) to the detriment of the Yakye Axa.¹¹⁶

Article 21 (Right to Property) in relation to Article 1(1) and 2 of the Convention, to the detriment of the Yakye Axa Community,¹¹⁷ because:

The State violated the Yakye Axa's right to property by obstructing the Community's use and enjoyment of its lands without legitimate public interest.¹¹⁸ With respect to indigenous communities, property is broadly applied to all material and immaterial elements of the land.¹¹⁹ Under

110. *Id.* ¶ 103, "Operative Paragraphs" ¶ 1.

111. *Id.* ¶ 55.

112. *See id.*

113. *Id.* ¶¶ 98, 111–13.

114. *Id.* ¶ 116; *see id.* ¶ 50.79.

115. *Id.* ¶¶ 114, 116.

116. *Id.* ¶ 119.

117. *Id.* ¶ 156, "Operative Paragraphs" ¶ 2.

118. *Id.* ¶ 156.

119. *Id.* ¶ 137.

Article 21 (Right to Property), any limitations on property must be both proportional and necessary to a legitimate public interest.¹²⁰ In turn, “proportionality” is determined by the balancing of private and public interests.¹²¹ Ultimately, when returning to ancestral lands proves impossible, the State may choose to compensate the displaced peoples monetarily or with other lands of similar quality and legal status.¹²² Nonetheless, such compensation is not unilaterally decided by the State; it must be done with the express consent of the affected individuals.¹²³

Here, the Court found substantial private and public interests in the preservation of both the Yakye Axa Community and modern democratic cultures, respectively.¹²⁴ Even though the Yakye Axa’s interests may be mitigated by justly compensating the Community, the Court held this to be a last resort after ruling out the possibility of its return to the Loma Verde estate.¹²⁵ More importantly, the State never consulted with the Yakye Axa about alternate relief, thereby undermining the value of the Loma Verde estate to the Community’s cultural identity.¹²⁶ Because the State effectively threatened the Yakye Axa’s cultural way of life, including their ability to practice traditions tied to their ancestral lands, the Court held that the Community’s right to use and enjoy the land was violated pursuant to Article 21 (Right to Property) of the Convention.¹²⁷

Articles 25 (Right to Judicial Protection) in relation to Article 1(1) and 2 of the Convention, to the detriment of the Yakye Axa Community,¹²⁸ because:

The State failed to provide effective administrative mechanisms through which the Yakye Axa could seek remedies to violations of their constitutional rights, especially given their vulnerability as indigenous peoples.¹²⁹ Appropriate judicial protection under Article 25 (Right to Judicial Protection) requires that states provide forums through which anyone can present a claim before a neutral, competent authority with

120. *Id.* ¶ 144.

121. *Id.* ¶ 145.

122. *Id.* ¶ 150.

123. *Id.* ¶ 151.

124. *Id.* ¶¶ 147–48.

125. *Id.* ¶ 149.

126. *Id.* ¶ 152.

127. *Id.* ¶¶ 155–56, “Operative Paragraphs” ¶ 2.

128. *Id.* ¶¶ 104, 118, “Operative Paragraphs” ¶ 1.

129. *Id.* ¶¶ 63, 104.

*the power to enter legally enforceable remedies.*¹³⁰

*First, the Court noted that despite having a state institution or procedure to adjudicate indigenous land claims, the State system lacked the effectiveness to resolve the Community's claims in a reasonable time.*¹³¹

*Based on several factors including the complexity of the case, the claimants' initiative, and the conduct of the adjudicating body, the Court held that the State failed to establish appropriate measures to ensure the petitioners had a "real opportunity" to resolve their claims within the domestic legal system.*¹³²

*Here, the Court found that the lengthy, eleven-year delay between the initial domestic proceedings and the issuance of the Court's Judgment was unreasonable.*¹³³ *Moreover, this delay was not due to the case's complexity or the fault of the parties.*¹³⁴ *Although the State claimed that the Yakye Axa did not initiate their land claim until late 2001, the Court found that the claim began to accrue in 1993 when the Community filed for legal status.*¹³⁵ *Similarly, despite the density of the facts presented before it, the Court determined that the delay was the result of systemic delays in the State's court system.*¹³⁶ *The Yakye Axa need not submit to administrative proceedings where these proceedings fail to resolve disputes in a reasonable time and are incapable of actually providing relief.*¹³⁷ *Based on the delay and ineffective domestic proceedings, the State violated Article 25 (Right to Judicial Protection) to the detriment of the Yakye Axa.*¹³⁸

The Court found by five votes to three that the State had not violated:

Article 4(1) (Prohibition of Arbitrary Deprivation of Life) in relation to Articles 1(1) and 2 of the Convention, to the detriment of sixteen deceased members of the Yakye Axa Community,¹³⁹ because:

130. *Id.* ¶ 56.

131. *Id.* ¶ 104.

132. *Id.* ¶ 102.

133. *Id.* ¶¶ 85–86.

134. *Id.* ¶ 86.

135. *Id.* ¶¶ 78, 84.

136. *Id.* ¶ 88.

137. *Id.* ¶ 97.

138. *Id.* ¶ 119, "Operative Paragraphs" ¶ 1.

139. *Id.* ¶¶ 177–78, "Operative Paragraphs" ¶ 4.

Although the representatives of the Yakye Axa alleged that sixteen members died from the lack of adequate food and healthcare, they failed to provide sufficient evidence to establish the causes of death of these individuals.¹⁴⁰ Article 4(1) (Prohibition of Arbitrary Deprivation of Life) grants every person the right to have his or her life respected and not arbitrarily deprived.¹⁴¹ To find a state responsible for deprivation of life, a causal link is required between the state's acts or omissions and the individuals' deaths.¹⁴² As there was little evidence regarding the causes of death of these individuals, and indeed a lack of death records, the Court found there was insufficient evidence to hold the State responsible for the deaths of these individuals.¹⁴³

C. Dissenting and Concurring Opinions

1. Partially Dissenting Opinion of Judge Alirio Abreu Burelli

In a separate opinion, Judge Abreu Burelli disagreed with the majority in their evaluation of evidence concerning the deaths of sixteen members of the Yakye Axa, including many young children.¹⁴⁴ Recalling the special attention given to children, women and the elderly in Article 4 (Right to Life) of the Convention, Judge Abreu Burelli believed the majority should have found the causes of deaths of some Community members as sufficiently proven.¹⁴⁵

Similarly, Judge Burelli summarized the rich and diverse protections afforded indigenous communities by the Convention in an effort to emphasize the need to protect their cultural identities while also acknowledging their limitations against national culture.¹⁴⁶

2. Dissenting Opinion of Judges Antônio A. Cançado Trindade and Manuel E. Ventura Robles

In a separate opinion, Judges Cançado Trindade and Ventura Ro-

140. *Id.* ¶¶ 177–78.

141. *Id.*

142. *Id.*

143. *Id.* ¶¶ 177–78, “Operative Paragraphs” ¶ 4; Yakye Axa Indigenous Community v. Paraguay, Merits, Reparations and Costs, Separate Opinion of Judge Alirio Abreu Burelli, Inter-Am. Ct. H.R. (ser. C) No. 125, ¶ 9 (June 17, 2005).

144. Yakye Axa Indigenous Community v. Paraguay, Separate Opinion of Judge Alirio Abreu Burelli, ¶ 7.

145. *Id.* ¶ 16.

146. *Id.* ¶ 36.

bles added to Judge Abreu Burelli's dissent by explaining that the majority failed to find an obvious "causal link" between the death of ten children and elders and the State's violation of their right to life.¹⁴⁷ This causal link is manifest by the State's failure to perform due diligence in establishing suitable living conditions for the Yakye Axa.¹⁴⁸ They next asserted that both the majority opinion and expert testimony findings that the State failed to improve the Yakye Axa's living conditions are sufficient to hold the State accountable for its failure to provide the deceased with adequate medical treatment.¹⁴⁹

3. Partly Concurring and Partly Dissenting Opinion of Judge Ad Hoc Ramón Fogel Pedroso

In a separate opinion, Judge Fogel Pedroso declared the need to distinguish between the consultation and consensus on the expropriation bill in order to ensure that the State could adopt appropriate domestic measures.¹⁵⁰ Although a large part of the Yakye Axa's suffering was from the incessant delays within State agencies, Judge Fogel Pedroso noted that the Community's lack of consensus when offered expropriation also contributed to prolonged displacement.¹⁵¹

Then, like Judges Abreu Burelli, Cançado Trindade, and Ventura Robles, Judge Fogel Pedroso criticized the majority for failing to attribute the deaths of Yakye Axa Community members to the State's negligence.¹⁵² However, Judge Fogel Pedroso recognized that when extreme poverty is considered a *per se* violation of the right to life, developing states are neither equipped to take drastic measures to provide their largely indigent populations with adequate living conditions nor are they solely responsible for destitute poverty.¹⁵³ Instead, Judge Fogel Pedroso suggested that only after multinational and international bodies adopt better human rights policies can the State and others secure their citizenry's right to life.¹⁵⁴

147. *Yakye Axa Indigenous Community v. Paraguay*, Merits, Reparations and Costs, Separate Opinion of Judge Antônio A. Cançado Trindade, Inter-Am. Ct. H.R. (ser. C) No. 125, ¶ 11 (June 17, 2005).

148. *Id.*

149. *Id.* ¶¶ 13, 15.

150. *Yakye Axa Indigenous Community v. Paraguay*, Merits, Reparations and Costs, Separate Opinion of Judge Ramón Fogel, Inter-Am. Ct. H.R. (ser. C) No. 125, ¶ 22 (June 17, 2005).

151. *Id.*

152. *Id.* ¶ 22.

153. *Id.* ¶ 34.

154. *Id.* ¶ 35.

IV. REPARATIONS

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

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

1. Transfer Ancestral Lands

The Court ordered the State to transfer an unspecified area of ancestral lands to the Yakye Axa Community by free deed within three years of notice of the Judgment.¹⁵⁵ While failing to define the land space, the Court acknowledged that should the land be tied to a private owner, the State must make an assessment for expropriation or, if that is unfeasible, it must arrange an alternate land grant.¹⁵⁶ If necessary, the State must also establish a fund to purchase the land to be granted to the Yakye Axa Community.¹⁵⁷

2. Provide Adequate Living Necessities in the Interim

The Court required that until the Yakya Axa settled onto their awarded land, the State must provide the Community with immediate and regular drinking water, medical care, food, toilet facilities, and bilingual educational material.¹⁵⁸

3. Adopt Domestic Legal Measures for Indigenous Access to Judicial Remedies

The State must adopt domestic procedures to ensure an effective mechanism by which indigenous communities may submit land claims and have them resolved.¹⁵⁹

4. Publicly Acknowledge International Responsibility

The Court ordered the State to release a public statement admitting

155. Yakye Axa Indigenous Community v. Paraguay, Merits, Reparations and Costs, ¶ 217.

156. *Id.*

157. *Id.* ¶¶ 217–18.

158. *Id.* ¶ 221.

159. *Id.* ¶ 225.

responsibility for the human rights violations against the Yakye Axa, which must be presented before government officials, Community members, and the public at large in the Enxet and Spanish or Guaraní languages.¹⁶⁰

5. Publish the Judgment

The Court held that the State must publish relevant parts of the Judgment in the Official Gazette and another national newspaper.¹⁶¹ Additionally, the State must broadcast the relevant portions of the Judgment in the Enxet and Spanish or Guaraní languages over public radio at least four times with two-week intervals between each broadcast.¹⁶²

6. Establish a Community Development Fund and Program

The State must create a community development fund and program to provide sanitation, infrastructure, and drinking water for the Yakye Axa Community.¹⁶³ The fund must establish education, housing, agricultural, and health programs, which will be implemented by a special committee.¹⁶⁴ The committee must be comprised of three representatives: one selected by the Community, one by the State, and the last by an agreement between the Community and the State.¹⁶⁵

B. Compensation

The Court awarded the following amounts:

1. Pecuniary Damages

The Court awarded \$45,000 to the Yakye Axa Community as a whole for expenses incurred in recovering their ancestral lands, including travel to various state agencies.¹⁶⁶ Since the award also included Tierraviva travel expenses, the Court tasked the Yakye Axa with reim-

160. *Id.* ¶ 226.

161. *Id.* ¶ 227.

162. *Id.*

163. *Id.* ¶ 205.

164. *Id.*

165. *Id.* ¶ 206.

166. *Id.* ¶ 195.

bursing the organization from this award.¹⁶⁷ However, the Court did not determine the specific amount to reimburse Tierraviva.¹⁶⁸

2. Non-Pecuniary Damages

The Court awarded \$950,000 to the community development fund, managed by an implementation committee, within two years of the Yakye Axa's settlement on the Loma Verde estate.¹⁶⁹

3. Costs and Expenses

The Court awarded the Yakye Axa \$15,000 to reimburse costs and expenses of their representatives, Tierraviva and CEJIL, in proceedings within the State, before the Commission, and before the Court.¹⁷⁰

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

\$ 1,010,000

C. Deadlines

The State and the representatives must select representatives for the community development program implementation committee within six months of notice of the Judgment.¹⁷¹ If, after six months, the parties have not reached an agreement, the Court will intervene.¹⁷²

The State must compensate the Community, pay costs and expenses, and publish the Judgment within one year of notice of the Judgment.¹⁷³ The State must also publicly acknowledge responsibility and establish the fund to purchase the Yakye Axa's ancestral lands within one year.¹⁷⁴

The State must supply the Community with necessities and implement the community development programs decided by the implementation committee within two years of the date granting the land to

167. *Id.*

168. *Id.*

169. *Id.* ¶ 205.

170. *Id.* ¶ 232.

171. *Id.* ¶ 206.

172. *Id.*

173. *Id.*

174. *Id.* ¶ 233.

the Community.¹⁷⁵

The State must transfer the land to the Yakye Axa Community within three years of notice of the Judgment.¹⁷⁶

Lastly, the State must adopt domestic legal measures within a reasonable time.¹⁷⁷

V. INTERPRETATION AND REVISION OF THE JUDGMENT

A. Composition of the Court

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
Emilia Segares Rodríguez, Deputy Secretary

B. Decision on the Merits

The victims' representatives sought clarification as to the reparation ordering the State to identify and return ancestral territory.¹⁷⁸ The Court clarified that the territories inhabited and claimed by the Yakye Axa were clearly defined during the State's inspection of the lands and that the State should have negotiated a land transfer.¹⁷⁹ In complying with its obligation to convey the property, the State must weigh the "legitimacy, necessity and proportionality" of competing public and private interests if the Yakye Axa's claims overlap with private property.¹⁸⁰ Even if it still is unable to secure these lands, the State can seek an alternate land transfer as a last resort.¹⁸¹ Given these considerations, the

175. *Id.* ¶ 205.

176. *Id.*

177. *Id.* ¶ 235.

178. *Yakye Axa Indigenous Community v. Paraguay*, Merits, Reparations and Costs, Interpretation of the Judgment, Separate Opinion of Judge Antônio A. Cançado Trindade, Inter-Am. Ct. H.R. (ser. C) No. 142, ¶ 6 (Feb. 6, 2006).

179. *Id.* ¶ 21.

180. *Id.* ¶ 24.

181. *Id.* ¶ 25.

Court held that the State was the responsible agent for identifying and transferring the land, and in fulfilling this reparation, the State must consider the value of the land to the Community.¹⁸²

The representatives additionally sought clarification as to the time limits to transfer the land and establish a fund to convey that land to the Community.¹⁸³ The Court clarified that the Judgment enumerated a series of tasks for the State to complete within three years.¹⁸⁴ First, it must identify the Yakye Axa's ancestral lands including its size and borders.¹⁸⁵ Second, if the lands are privately-owned, the State is to appraise it for acquisition.¹⁸⁶ The State must confer with the Yakye Axa about alternate lands if the State is objectively unable to acquire the claimed territory.¹⁸⁷ Ultimately upon agreement, Paraguay must freely transfer the lands through a title deed.¹⁸⁸ The Court additionally clarified that the State has one year to establish a fund to acquire and transfer the territory.¹⁸⁹ The Court noted that the State should identify the territory to be conveyed before establishing the fund in order to determine whether the land must be purchased in the first place.¹⁹⁰

C. Dissenting and Concurring Opinions

1. Concurring Opinion of Judge Antônio A. Cançado Trindade

In a separate opinion, Judge Cançado Trindade emphasized the importance of the Yakye Axa's return to their ancestral lands as one of identity and independence.¹⁹¹ Judge Cançado Trindade highlighted that the return itself is a critical aspect of reparations as a place for peace and security for indigenous communities that have faced violent histories like the Yakye Axa.¹⁹² Effectively, Judge Cançado Trindade reiterated the universal obligation to protect cultural identities by insisting that the State procure the Loma Verde estate or, at a minimum, get the Community's consent for decisions critical to its survival.¹⁹³

182. *Id.* ¶ 26.

183. *Id.* ¶ 6.

184. *Id.* ¶ 34.

185. *Id.*

186. *Id.*

187. *Id.*

188. *Id.*

189. *Id.* ¶ 35.

190. *Id.* ¶ 36.

191. *Id.* ¶¶ 2, 6.

192. *Id.* ¶¶ 4–5, 7.

193. *Id.* ¶ 8, 12.

VI. COMPLIANCE AND FOLLOW-UP

February 8, 2008: The State fully complied with its obligation to publicly acknowledge its responsibility for the violations of the rights of the Yakye Axa Community.¹⁹⁴

The State partially complied with its obligation to compensate the Community and reimburse costs and expenses.¹⁹⁵ While the State delivered payment of the pecuniary damages and costs and expenses, it did so after the time allowed and thus owes interest on the amounts.¹⁹⁶ The State has not paid this interest.¹⁹⁷

The State partially complied with its obligation to grant the traditional territory to the Yakye Axa Community.¹⁹⁸ The State indicated that INDI requested the expropriation of lands measuring 15,963 hectares on behalf of the Yakye Axa and secured a protective order from State civil court prohibiting any changes to the property.¹⁹⁹

The Court did not have enough evidence to determine whether the State complied with its obligation to establish a fund for the Yakye Axa land grant.²⁰⁰ The State alleged that INDI allocated \$106,350 into the fund; however, neither INDI nor the Central Bank was able to locate these funds.²⁰¹

The Court did not have enough evidence to determine whether the State complied with its obligation to open a community development fund and program and form the implementation committee.²⁰² The State alleged that the committee had been created and that the State had deposited \$100,000 into the fund.²⁰³ Nevertheless, while the committee met on several occasions, there was no record of the community development fund with the Central Bank.²⁰⁴

The Court did not have enough evidence to determine whether the State complied with its obligation to publish the Judgment and broad-

194. *Yakye Axa Indigenous Community v. Paraguay*, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R., “Declares” ¶ 1 (Feb. 8, 2008).

195. *Id.* “Declares” ¶ 2.

196. *Id.* ¶¶ 45, 47.

197. *Id.*

198. *Id.* ¶¶ 8, 11.

199. *Id.* ¶ 8.

200. *Id.* “Declares” ¶ 3(a).

201. *Id.* ¶¶ 22–24.

202. *Id.* ¶ 27.

203. *Id.*

204. *Id.* ¶ 28.

cast it on *Radio Nacional*.²⁰⁵ The State did not provide evidence that it forwarded a copy of the publications and broadcast to the representatives as required in the Judgment and the Court's Interpretation of the Judgment.²⁰⁶

The State failed to comply with its obligation to adopt state laws ensuring effective domestic mechanisms for handling indigenous land claims.²⁰⁷ The State requested a three-year extension to enact this legislation; however, due to the post-Judgment deaths of eight community members due to irregular, insufficient, and contaminated food and water deliveries, as well as poor medical and educational services, the Court denied the extension.²⁰⁸

The Court will continue to monitor the State's compliance regarding granting the lands, delivery of goods and services, creation of an expropriation fund, implementation of the community development fund and programs, adoption of domestic legislation, and publication and dissemination of Judgment.²⁰⁹ The Court then mandated that the State submit a full report on its compliance by May 12, 2008.²¹⁰

VII. LIST OF DOCUMENTS

A. *Inter-American Court*

1. Preliminary Objections

[None]

2. Merits, Reparations and Costs

[Yakye Axa Indigenous Community v. Paraguay, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. \(ser. C\) No. 125 \(June 17, 2005\).](#)

[Yakye Axa Indigenous Community v. Paraguay, Merits, Reparations and Costs, Separate Opinion of Judge Alirio Abreu Burelli, Inter-Am. Ct. H.R. \(ser. C\) No. 125 \(June 17, 2005\).](#)

205. *Id.* "Having Seen" ¶ 39.

206. *Id.*

207. *Id.* ¶ 9.

208. *Id.* ¶¶ 10–11, 15–16.

209. *Id.* ¶ 3.

210. *Yakye Axa Indigenous Community v. Paraguay, Monitoring Compliance with Judgment, "And Decides" ¶ 2.*

[Yakye Axa Indigenous Community v. Paraguay, Merits, Reparations and Costs, Separate Opinion of Judge Antônio A. Cançado Trindade, Inter-Am. Ct. H.R. \(ser. C\) No. 125 \(June 17, 2005\).](#)

[Yakye Axa Indigenous Community v. Paraguay, Merits, Reparations and Costs, Separate Opinion of Judge Ramón Fogel, Inter-Am. Ct. H.R. \(ser. C\) No. 125 \(June 17, 2005\).](#)

3. Provisional Measures

[None]

4. Compliance Monitoring

[Yakye Axa 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

[Yakye Axa Indigenous Community v. Paraguay, Merits, Reparations and Costs, Interpretation of the Judgment, Inter-Am. Ct. H.R. \(ser. C\) No. 142, \(Feb. 6, 2006\).](#)

[Yakye Axa Indigenous Community v. Paraguay, Merits, Reparations and Costs, Interpretation of the Judgment, Separate Opinion of Judge Antônio A. Cançado Trindade, Inter-Am. Ct. H.R. \(ser. C\) No. 142 \(Feb. 6, 2006\).](#)

B. Inter-American Commission

1. Petition to the Commission

[Not Available]

2. Report on Admissibility

[Yakye Axa Indigenous Community v. Paraguay, Admissibility Report, Report No. 2/02, Inter-Am. Comm'n H.R., Case No. 12.313 \(Feb. 27, 2002\).](#)

3. Provisional Measures

[None]

4. Report on Merits

Yakye Axa Indigenous Community v. Paraguay, Report on Merits, Report No. 67/02, Inter-Am. Comm'n H.R., Case No. 12.313 (Oct. 24, 2002).

5. Application to the Court

[Not Available]

VIII. BIBLIOGRAPHY

Adolfo S. Azcuna, *The Writ of Amparo: A remedy to enforce fundamental rights*, 37 ATENEO L.J. 15 (1993).

Applied Biodiversity Science, *Gran Chaco* (last visited Oct. 14, 2015), <http://biodiversity.tamu.edu/research/regions/chaco>.

Gilbert James Butland, *Paraguay: History* (Encyc. Britannica, 2015), available at <http://www.britannica.com/place/Paraguay/Government-and-society#toc27945>.

Christine McDonald, *Green Going Gone: The tragic deforestation of the Chaco* (July 28, 2014), available at <http://www.rollingstone.com/culture/news/green-going-gone-the-tragic-deforestation-of-the-chaco-20140728>.

World Wildlife Foundation, *Southern South America: Bolivia, Paraguay, and Argentina* (last visited Oct. 14, 2015), <http://www.worldwildlife.org/ecoregions/nt0210>.

Yakye Axa Indigenous Community v. Paraguay, Annex A, List of Community Members of the Indigenous Yakye Axa (2002).