

# Sawhoyamaxa Indigenous Community v. Paraguay

## I. COMPLIANCE AND FOLLOW-UP ADDENDUM<sup>1</sup>

**February 2, 2007:** The Court gave an update on the State's obligation to comply with the measures requested in the Judgment on the merits, reparations and costs.<sup>2</sup> It found that the State failed to comply with all of the measures that the Court ordered in the Judgment.<sup>3</sup> In addition to the lack of lands, the Court found that the unemployment and illiteracy levels, and morbidity and malnutrition rates in the Sawhoyamaxa community were still high.<sup>4</sup> The Court recognized that even after issuing the Judgment, four members of the Sawhoyamaxa community died due to either the State's failure to provide medical care, or the State's negligence in providing medical care to those suffering from illnesses.<sup>5</sup> The State failed to issue birth and death certificates for three of the deceased children.<sup>6</sup> Further, the Court emphasized that all four victims died after the deadline had passed for the State's construction of an emergency response communication system.<sup>7</sup> Finally, the Court explained that although the State did initially comply with its obligation to provide food to the Sawhoyamaxa community, the food provisions were insufficient to meet minimum standards of quality or quantity.<sup>8</sup>

The Court noted that after the Judgment was issued, at least nineteen Sawhoyamaxa community members died due to illnesses that the State failed to prevent.<sup>9</sup> The Court refused to recognize the State in compliance with the obligation to provide medical care to the community because

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1. Gabrielle Szlachta-McGinn, Author; Kevin Zipser, Editor; Elizabeth Russo, Chief IACHR Editor; Cesare Romano, Faculty Advisor.

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

3. *Id.* "Declares" ¶ 1.

4. *Id.* "Considering" ¶ 5.

5. *Id.* ¶ 3.

6. *Id.*

7. *Id.*

8. Sawhoyamaxa Indigenous Community v. Paraguay, Monitoring Compliance with Judgment, Order of the Court, ¶ 3.

9. *Id.*

several community members were alive and suffering from illnesses and were not receiving adequate medical care.<sup>10</sup> The Court acknowledged that the State adopted some positive measures, including providing transportation to medical centers,<sup>11</sup> but they were insufficient to exempt the State from further action.<sup>12</sup>

Thus, the Court concluded that the State failed to comply with obligations to: (1) implement legislative and administrative measures necessary to deliver traditional lands back to the Sawhoyamaxa community; (2) establish a community development fund; (3) pay non-pecuniary damages, costs and expenses to the victims; (4) provide the Sawhoyamaxa community with basic goods and services including health care, educational materials, and food and water,<sup>13</sup> while the land transaction remained incomplete; (5) construct a communications system in the Sawhoyamaxa community that would give the community the ability to contact competent health authorities during emergencies; (6) implement a registration and documentation program to provide community members with identification cards; (7) adopt domestic legislation that would permit community members to claim property rights to their traditional lands; and (8) publish and broadcast the Judgment.<sup>14</sup>

**December 14, 2007:** The Court summoned the Commission, the victims' representatives and the State to a hearing so that the Court could obtain information regarding the State's compliance after the victims' representatives reported that the State failed to give back their traditional lands.<sup>15</sup> The Court discovered that the State had not yet established a community development fund,<sup>16</sup> nor had it compensated victims and their families in full.<sup>17</sup> The Court also determined that the State-delivered water supply was insufficient to support the Sawhoyamaxa community, and that the State failed to make timely deliveries of food provisions and educational materials to the community.<sup>18</sup> Last, the State provided infrequent medical

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10. *Id.* "Considering" ¶ 7.

11. *Id.* "Considering" ¶ 16.

12. *Id.* "Considering" ¶ 15.

13. *Id.* ¶ 2.

14. *Sawhoyamaxa Indigenous Community v. Paraguay, Monitoring Compliance with Judgment, Order of the Court, ¶ 1.*

15. *Sawhoyamaxa Indigenous Community v. Paraguay, Monitoring Compliance with Judgment, Resolution of the President of the Court, Inter-Am Ct. H.R. ¶ 1 (Dec. 14, 2007).*

16. *Id.* ¶ 8.

17. *Id.* ¶¶ 12-14.

18. *Id.* ¶ 16.

assistance that was not suitable for community members suffering from illnesses with worsening conditions.<sup>19</sup>

The Court acknowledged that the State started implementing a communication system by installing one UHF radio,<sup>20</sup> and also began a registration and documentation program. However, the State failed to complete both programs.<sup>21</sup> The Court also recognized that the State published the Judgment in the Official Gazette of the Republic of Paraguay,<sup>22</sup> but asserted that the State failed to finance a radio transmission and publish the Judgment in a national newspaper with widespread circulation.<sup>23</sup> Thus, the Court requested additional information from the State<sup>24</sup> and kept open the proceeding for monitoring compliance for all of the reparations.<sup>25</sup>

**February 8, 2008:** The Court submitted an update on the State's compliance.<sup>26</sup> The Court found that the State fully complied with its obligation to install a communication system in the Sawhoyamaxa community because it successfully completed the installation of two UHF radios.<sup>27</sup> Further, the State partially compensated Sawhoyamaxa representatives for damages, and only reimbursed some of the costs and expenses the State owed.<sup>28</sup> The Court found that the State partially implemented a registration and documentation program, wherein the Identification Department of the National Police Force ("INDI") issued identity cards, birth certificates and Indigenous Peoples Identity Cards to over 90% of the population.<sup>29</sup> The Court refused to consider that the State's actions were sufficient to conclude that the State fully complied with its obligation and required that the State issue identity cards and birth certificates to everyone.<sup>30</sup> Last, the Court found that the State partially complied with its obligation to publish the Judgment because the State had yet to publish the Judgment in a national newspaper with widespread circulation.<sup>31</sup> The

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19. *Id.*

20. *Id.* ¶ 20.

21. *Sawhoyamaxa Indigenous Community v. Paraguay, Monitoring Compliance with Judgment, Resolution of the President of the Court, "Considering" ¶ 23.*

22. *Id.* ¶ 30.

23. *Id.* ¶ 31.

24. *Id.* ¶¶ 22, 25, 29, 33.

25. *Id.* ¶ 19.

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

27. *Id.* ¶¶ 36, 38-39.

28. *Id.* ¶¶ 21, 18.

29. *Id.* ¶ 40.

30. *Id.* ¶ 41.

31. *Id.* ¶ 51.

Court kept open the proceeding for monitoring compliance for the remaining reparations.<sup>32</sup>

**May 20, 2009:** The Court decided to hold a public hearing to obtain information on the State's compliance.<sup>33</sup> It required the State to facilitate the entry and exit of all attendees who were required to be at the hearing.<sup>34</sup> The Court first acknowledged that the State deposited four hundred million Guaraní (about \$79,364.89 USD) into an open fund for the Sawhoyamaxa Community to use for the acquisition of their traditional lands.<sup>35</sup> However, the Court agreed with Sawhoyamaxa representatives that this amount was enough to start the fund, but not enough to fully resolve the outstanding obligation.<sup>36</sup> Further, the Court considered the State's failure to initiate negotiations for the transfer of ownership of such lands with the current land owner.<sup>37</sup> Thus, the Court found the State's ongoing efforts insufficient to satisfy their obligations,<sup>38</sup> and requested that the State provide more detailed information on the steps it took to secure and deliver the land to the Sawhoyamaxa community.<sup>39</sup>

The Court declared that the State also failed to provide information regarding efforts to develop a registration and documentation program, and adopt any legislative or administrative measures necessary to provide community members with an effective property right over their ancestral lands.<sup>40</sup> Therefore, the Court requested that the State provide information relating to its budget allocation for the delivery of funds into the community development account.<sup>41</sup> The Court acknowledged the State's progress in financially compensating victims and their families, however, due to the totality of the circumstances, the Court requested that the State give detailed information regarding its ongoing failure to comply with all of the measures.<sup>42</sup>

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32. Sawhoyamaxa Indigenous Community v. Paraguay, Monitoring Compliance with Judgment, Order of the Court, "Declares" ¶ 3.

33. Sawhoyamaxa Indigenous Community v. Paraguay, Call for Public Hearing, Judgment Compliance Supervision, Resolution of the President of the Court, Inter-Am Ct. H.R. ¶ 38, "Resolves" ¶ 2 (May 20, 2009).

34. *Id.* "Resolves" ¶ 2.

35. *Id.* ¶ 7.

36. *Id.* ¶ 8.

37. *Id.*

38. *Id.*

39. Sawhoyamaxa Indigenous Community v. Paraguay, Call for Public Hearing, Judgment Compliance Supervision, Resolution of the President of the Court, ¶ 10.

40. *Id.* ¶ 17.

41. *Id.* ¶¶ 13, 19.

42. *Id.* ¶¶ 16, 32.

**May 14, 2019:** The Court gave an update on the State's compliance.<sup>43</sup> The Court concluded that the State had fully complied with its obligation to enact a registration and documentation program that provides the Sawhoyamaxa community members an opportunity to register and obtain identification cards.<sup>44</sup> However, the Court kept open the proceeding for monitoring compliance for the remaining reparations including: (1) delivering the traditional lands that belonged to the community; (2) creating a community development fund; (3) paying damages and reimbursing victims' representatives for costs and expenses; (4) supplying basic goods and services to the community; (5) adopting legislative and administrative measures to guarantee the enjoyment of the right to property of community members; and (6) publishing parts of the Judgment in a national newspaper.<sup>45</sup>

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43. *Sawhoyamaxa Indigenous Community v. Paraguay*, Judgment Compliance Supervision, Resolution of the Court, Inter-Am. Ct. H.R. (May 14, 2019).

44. *Id.* "Resolves" ¶ 2.

45. *Id.* ¶ 3.