

Xákmok Kásek Indigenous Community v. Paraguay

ABSTRACT¹

This case is about the rights of an indigenous community in the Chaco region of Paraguay. Since the mid-1980s, the community had been trying to recover ancestral land that had been taken away by settlers during the nineteenth and early twentieth century. Despite national laws to protect indigenous people's rights and the creation of agencies to that effect, by the early 2000s the land had not yet been returned, leading to litigation before the Inter-American system. Eventually, the Court found violation of several articles of the American Convention. This case is noteworthy for the treatment of collective rights and the question of the legal personality of the indigenous community.

I. FACTS

A. Chronology of Events

Between the late 19th century and early 20th century: The State allows Chaco, the native land of the Xákmok Kásek Indigenous Community (“the Community”), to be colonized and sells the Community’s land to ranchers, missionaries, and Mennonites, among others.² Ranchers employ the indigenous people to work in a slave-like environment at *estancias*.³

1986: The Community’s leader submits a request with the State’s Institute of Indigenous Affairs (“INDI”) for two hundred hectares of land that had been taken from the Community.⁴

1. Emily Williams, Author; Nathaniel Reinhardt, Editor; Kathryn Benson, Chief IACHR Editor; Cesare Romano, Faculty Advisor.

2. Xákmok Kásek Indigenous Community v. Paraguay, Application to the Court, Inter-Am. Comm’n H.R., Case No.12.420, ¶¶ 73, 76 (July 3, 2009).

3. *Id.* ¶ 93. An estancia is a South American cattle ranch or stock farm. *Estancia*, MERRIAM-WEBSTER.COM, <http://www.merriam-webster.com/dictionary/estancia> (last visited Sept. 18, 2015).

4. Xákmok Kásek Indigenous Community v. Paraguay, Application to the Court, ¶ 112,

November 4, 1987: INDI Decree No. 44/86 recognizes the Community's leaders as representatives, and State Decree No. 25,297 grants the Community judicial personality.⁵

December 28, 1990: The Community's leader submits a request with the Rural Welfare Institute (*Instituto de Bienestar Rural*, "IBR") for 6,900 hectares of land that had been taken from the Community.⁶ The Community follows the procedure of the State's Law 904/81 Statute of Indigenous Communities, whereby after judicial personality has been granted, land title is supposed to be transferred.⁷ IBR subsequently opens administrative case No. 15.032.⁸

June 17, 1991: An IBR official inspects the land, called "Estancia Salazar," determining the land requested is about 6,500 hectares and is part of a 109,000 hectare piece.⁹ The official finds 120 indigenous people on the requested land.¹⁰

Between July 24, 1991 and October 9, 1991: IBR requests twice for the landowner, Mr. Roberto Carlos Eaton of Eaton Company, to create a plan for transferring the land back to the Community.¹¹

November 5, 1991: IBR Report No. 2476 determines that the Community is entitled to the land and that Mr. Eaton is not meeting the terms of Law 904/81.¹²

September 22, 1992: Following a second inspection, IBR report No. 503 determines that 250 people live in the Community, and they live in such a poor state of affairs that returning the land is vital.¹³ The report

n.93.

5. *Id.* ¶ 111.

6. *Id.* ¶ 113, n.95, n.98.

7. *Id.* ¶¶ 114–15.

8. *Id.* ¶ 116.

9. *Id.* ¶ 117.

10. *Id.*

11. *Id.* ¶ 117.

12. *Id.*

13. *Id.* Living conditions on the land are so abysmal that the State declares a state of emergency and mandates assistance in Decree No. 1830. The following are a few indigenous peoples who died as a result of the living conditions: Sara Gonzáles López, Yelsi Karina López Cabañas, Remigia Ruiz, Aida Carolina Gonzáles, [No First Name, "NN"] Ávalos or Ríos Torres, Abundio

mentions the Community has accepted the owner's offer for a different property; later, however, the Community's legal representatives allege they were not informed of this offer and would not accept it because the land is not appropriate for farming.¹⁴

November 11, 1993: Community leaders request an increase to 20,000 rather than 6,900 hectares of land because Article 64 of the Political Constitution of Paraguay, recently promulgated on June 20, 1992, establishes the indigenous people's right to community ownership.¹⁵

December 27, 1993: The State's Fourth Circuit Civil and Commercial Lower Court asks the IBR for a copy of the case file because the court received an injunction request from the Community's legal representatives.¹⁶

February 11, 1994: IBR holds a conciliation hearing between the Community's legal counsel and the Eaton Company.¹⁷ The Community's representatives explain that the injunction requested is intended to block any proposed sale of the disputed land to a third party.¹⁸ The Community's attorneys state that they possess specific information that the disputed land is being offered for sale.¹⁹

June 29, 1994: IBR's Head of Indigenous Advocacy refers the case to INDI for a verdict on expropriation of the land because the Community has exhausted all administrative routes.²⁰

October 15, 1995: INDI President writes to the landowners' legal representatives seeking a firm offer for the land.²¹

Inter Dermott, NN Dermott Martínez, NN García Dermott, Adalberto Gonzáles López, Roberto Roa Gonzáles, NN Ávalos or Ríos Torres, NN Dermott Ruiz, NN Wilfrida Ojeda, Jonás Ávalos or Ríos Torres, Rosa Dermott, Tito García, NN Dermott Larrosa, Mercedes Dermott Larrosa, Sargento Giménez, and Rosana Corrientes Domínguez. Xákmok Kásek Indigenous Community v. Paraguay, Merits, Reparations, and Costs, ¶¶ 191, 226.

14. Xákmok Kásek Indigenous Community v. Paraguay, Application to the Court, ¶ 117.

15. *Id.*

16. *Id.* ¶¶ 125–26, n.127.

17. *Id.* ¶ 126.

18. *Id.* ¶¶ 117, 126, n.114.

19. *Id.* ¶ 126.

20. *Id.* ¶ 117.

21. *Id.*

November 7, 1995: Eaton Company's legal representative writes to INDI that the requested land cannot be sold because the land provides valuable access to the "Trans-Chaco route."²² The company states that selling the land "would be tantamount to destroying a productive business unit."²³

June 23, 1999: Community leaders file a petition with Congress for the transfer of Farm 1418 on Eaton Company's "Estancia Salazar."²⁴

Between June 25, 1999 and November 16, 2000: Senator Nidia Flores announces a bill that would grant the Community 10,700 hectares on Farm 1418.²⁵ Through Report No. 11-2000/2001, Chamber of Deputies' Agrarian Reform and Rural Welfare Commission advises for the bill to be passed, but later withdraws the report without providing a reason.²⁶ The Senate rejects the bill in Resolution No. 693.²⁷

May 15, 2001: *Tierraviva a los Pueblos Indígenas del Chaco* ("Tier-raviva"), a non-governmental organization, presents a petition on behalf of the Community to the Inter-American Commission on Human Rights.²⁸

February 20, 2003: The Commission issues the Report on Admissibility.²⁹

Between December 2004 and August 2006: The Community requests multiple times that the case file, which had been lost at INDI, be restored.³⁰

January 31, 2008: Through Decree No. 11804, the State proclaims Estancia Salazar a protected wild area for five years, meaning that the land cannot be transferred, that Enforcement Authority will evict anyone who

22. *Id.* ¶¶ 82, 117, n.27.

23. *Id.* ¶ 117.

24. *Id.* ¶ 120.

25. *Id.* ¶ 121.

26. *Id.* ¶¶ 122–23.

27. *Id.* ¶ 124.

28. *Xákmok Kásek Indigenous Community v. Paraguay*, Admissibility Report, Report No. 11/03, Inter-Am. Comm'n H.R., ¶ 1 (Feb. 20, 2).

29. *Xákmok Kásek Indigenous Community v. Paraguay*, Admissibility Report.

30. *Xákmok Kásek Indigenous Community v. Paraguay*, Application to the Court, ¶ 119.

occupies it, and that Enforcement Authority must give permission for anything to be taken from it.³¹

First week of March 2008: The State forces the Community to move to a 1,500 hectare piece of land, yielded by another indigenous community.³²

B. Other Relevant Facts

The people of the Xákmok Kásek Indigenous Community are Enxet-Lengua indigenous people.³³ Enxet-Lengua indigenous people are native to Chaco.³⁴ They are traditionally hunters, fishermen, and gatherers.³⁵ This lifestyle requires substantial land area.³⁶

II. PROCEDURAL HISTORY

A. Before the Commission

May 15, 2001: Tierraviva files a petition on behalf of the Community with the Inter-American Commission on Human Rights.³⁷

February 20, 2003: The Commission issues Report on Admissibility No. 11/03.³⁸ The State claims the petition is not admissible because the Community has not exhausted domestic remedies.³⁹ The Commission rebuts with the argument that the Community has pursued the State's domestic remedies in vain, and, furthermore, requires that, in order to sufficiently allege a failure to exhaust domestic remedies, the State must show the pursued remedies would produce results.⁴⁰ Additionally, the Commission says it does not consider the State's offer to provide an alternative piece of land to be a domestic remedy at all.⁴¹ The Commission

31. *Id.* ¶¶ 128–30.

32. *Id.* ¶ 82.

33. *Id.* ¶ 71.

34. *Id.*

35. *Id.* ¶ 72.

36. *Id.*

37. Xákmok Kásek Indigenous Community v. Paraguay, Admissibility Report, Report No. 11/03, Inter-Am. Comm'n H.R., ¶ 1 (Feb. 20, 2).

38. Xákmok Kásek Indigenous Community v. Paraguay, Admissibility Report.

39. *Id.* ¶ 23.

40. *Id.* ¶¶ 34–36.

41. *Id.* ¶¶ 24, 37.

concludes that Article 46(2)(c) of the American Convention exempts the Community from having to exhaust domestic remedies because of the unjustified delay by the State.⁴²

July 17, 2008: The Commission issues Report on the Merits No. 30/08.⁴³ The report determines that, because the State has not protected the Community's property rights, its members' lives are in grave danger.⁴⁴ Specifically, it claims the State has violated Articles 3 (Right to Juridical Personality), 4 (Right to Life), 8(1) (Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal), 19 (Rights of the Child), 21 (Right to Property), and 25 (Right to Judicial Protection), all in relation to Articles 1(1) (Obligation of Non-Discrimination) and 2 (Domestic Legal Effects) of the American Convention.⁴⁵ It recommends the State urgently take the following actions: 1) satisfy the Community's property rights and safeguard the land until it is transferred; 2) give another piece of land on which all parties agree if the requested land becomes impossible to transfer; 3) create a method for indigenous communities to recover land and steps to avoid a similar re-occurrence; 4) give the Community sufficient goods and services; 5) make certain that Community births are registered; 6) create a care program for indigenous children; and 7) make reparations.⁴⁶

Between October 24, 2009 and June 30, 2009: The State requests, and the Commission grants, multiple extensions to submit the State's report on compliance with recommendations.⁴⁷ The State explains that an agreement with the Community is pending signatures.⁴⁸ The State also reports it has approved Decree No. 1595, which establishes a State commission to fulfill the steps the Commission recommended it take, and Decree No. 1830, which declares the Community in a state of emergency.⁴⁹ Finally, the State reports on resolution No. 634, which provides INDI with money to buy the Community land.⁵⁰

42. *Id.* ¶ 38.

43. *Xákmok Kásek Indigenous Community v. Paraguay*, Application to the Court, ¶ 44 (July 3, 2009).

44. *Id.* ¶ 44(a).

45. *Id.* ¶ 44(b).

46. *Id.* ¶¶ 45(1)–(9).

47. *Id.* ¶¶ 49–50, 53–54, 58–59, 62, 68.

48. *Id.* ¶¶ 56, 58.

49. *Id.* ¶¶ 60, 64.

50. *Id.* ¶ 66.

B. Before the Court

July 3, 2009: The Commission submits the case to the Court after the State failed to adopt all of its recommendations.⁵¹

1. Violations Alleged by Commission⁵²

Article 3 (Right to Juridical Personality)

Article 4 (Right to Life)

Article 8(1) (Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal)

Article 19 (Rights of the Child)

Article 21 (Right to Property)

Article 25 (Right to Judicial Protection)

all in relation to:

Articles 1(1) (Obligation of Non-Discrimination) and

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

2. Violations Alleged by Representatives of the Victims⁵³

Same Violations Alleged by Commission, plus:

Article 5 (Right to Humane Treatment) of the American Convention.

September 16, 2009: The State appoints Augusto Fogel Pedrozo as judge *ad hoc*.⁵⁴

51. Xákmok Kásek Indigenous Community v. Paraguay, Application to the Court.

52. *Id.* ¶ 69; Xákmok Kásek Indigenous Community v. Paraguay, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 214, ¶ 3 (Aug. 24, 2010). María Silva Guillén, Elizabeth Abi-Mershed, Karla I. Quintana Osuna, and Federico Guzmán serve as representatives for the Commission. Xákmok Kásek Indigenous Community v. Paraguay, Merits, Reparations, and Costs, n.7.

53. Oscar Ayala Amarrila and Julia Cabello Alonso, members of Tierraviva, served as representatives of the Xákmok Kásek Indigenous Community. Xákmok Kásek Indigenous Community v. Paraguay, Merits, Reparations, and Costs, ¶ 4.

54. *Id.* ¶ 5, n.4.

III. MERITS

A. Composition of the Court

Diego García-Sayán, President
Leonardo Franco, Vice President
Manuel E. Ventura Robles, Judge
Margarette May Macaulay, Judge
Rhadys Abreu Blondet, Judge
Alberto Pérez Pérez, Judge
Eduardo Vio Grossi, Judge
Augusto Fogel Pedrozo, Judge *Ad Hoc*

Pablo Saavedra Alessandri, Secretary
Emilia Segares Rodríguez, Deputy Secretary

B. Decision on the Merits

August 24, 2010: The Court issues its Judgment on Merits, Reparations and Costs.⁵⁵

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

Articles 8(1) (Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal), 21(1) (Right to Use and Enjoyment of Property) and 25(1) (Right of Recourse Before a Competent Court) in relation to Articles 1(1) and 2 of the Convention, to the detriment of the Community,⁵⁶ because:

The State deprived the Community of its land, did not deny the Community had a legal right to this land, but did not provide an effective or appropriate remedy.⁵⁷ A remedy is effective and appropriate if it ends the State's violation of the victims' human rights.⁵⁸ Here, the State Constitution guaranteed an administrative remedy to reclaim indigenous lands.⁵⁹ However, the State refused to return the land on the grounds

55. *Xákmok Kásek Indigenous Community v. Paraguay*, Merits, Reparations, and Costs.

56. *Id.* ¶ 275, “Operative Paragraphs” ¶ 2.

57. *Id.* ¶¶ 89, 140, 143.

58. *Id.* ¶ 140.

59. *Id.* ¶ 143.

that it was privately owned.⁶⁰ Additionally, the State only conducted two on-site inspections and prepared a single report, despite the State's obligation under domestic law to brainstorm definitive solutions to complaints.⁶¹ This administrative remedy was ineffective and thus violated Article 25(1) (Right of Recourse Before a Competent Court).⁶² As a result of the State's inactions, the Community's "cultural identity" was harmed, and the Community was denied the use of its traditional lands, all in violation of Article 21(1) (Right to Use and Enjoyment of Property).⁶³

Moreover, the State's ineffective attempts at remedying the situation were unreasonably delayed and in violation of due diligence requirements, even though the Community repeatedly sought State interference.⁶⁴ This unreasonable delay directly affected the Community's living conditions.⁶⁵ Thus, the State violated Article 8(1) (Right to a Hearing Within Reasonable Time) of the Convention.⁶⁶

Article 4(1) (Prohibition of Arbitrary Deprivation of Life) in relation to Article 1(1) of the Convention, to the detriment of the Community,⁶⁷ because:

*The right to life encompasses the right to decent living conditions.*⁶⁸ After issuing Decree No. 1830, which declared a state of emergency in the Community and mandated that the State must provide assistance to the members of the Community, the State still failed to provide adequate water, nutrition, health-care services, and education.⁶⁹ Because the State's assistance was insufficient and neglected to provide basic services, the State violated Article 4(1) (Prohibition of Arbitrary Deprivation of Life).⁷⁰

Article 4(1) (Prohibition of Arbitrary Deprivation of Life) in rela-

60. *Id.* ¶ 144.

61. *Id.* ¶ 153.

62. *Id.* ¶ 170.

63. *Id.* ¶¶ 170, 182.

64. *Id.* ¶¶ 131, 138.

65. *Id.* ¶ 136.

66. *Id.* ¶¶ 138, 170.

67. *Id.* ¶ 275, "Operative Paragraphs" ¶ 3.

68. *Id.* ¶ 183.

69. *Id.* ¶¶ 196, 202, 208, 213.

70. *Id.* ¶ 217.

tion to Article 1(1) of the Convention, to the detriment of Ms. González López, Ms. López Cabañas, Ms. Ruiz, Ms. Carolina González, Mr. Ávalos or Ríos Torres, Mr. Inter. Dermott, Ms. Dermott Martínez, Ms. García Dermott, Mr. González López, Mr. Roa González, Mr. Ávalos Torres, Mr. Dermott Ruiz, and Ms. Wilfrida Ojeda,⁷¹ because:

The right to life encompasses the right to decent living conditions.⁷² After issuing Decree No. 1830, which declared a state of emergency in the Community and mandated that the State provide assistance to the members of the Community, the State failed to take reasonable steps to provide sufficient medical care and other emergency assistance to those individuals.⁷³ The State was responsible for their deaths and thus violated Article 4(1) (Prohibition of Arbitrary Deprivation of Life).⁷⁴

Article 3 (Right to Juridical Personality) in relation to Article 1(1) of the Convention, to the detriment of Mr. Jonás Ávalos or Ríos Torres, Ms. Dermott, Ms. López Cabañas, Mr. García, Ms. Carolina González, Mr. Inter. Dermott, Ms. Dermott Larrosa, Mr. Ávalos or Ríos Torres, Ms. Dermott Martínez, Ms. Dermott Larrosa, Ms. García Dermott, Mr. González López, Mr. Roa González, Mr. Ávalos Torres, Mr. Ríos Torres, Mr. Dermott Ruiz, Ms. Dermott Larrosa, Mr. Giménez, and Ms. Corrientes Domínguez,⁷⁵ because:

Many individuals in the Community did not possess birth and death certificates because the State did not guarantee access to procedures necessary to obtain these documents.⁷⁶ Individuals without these identity documents were unable to prove their existence.⁷⁷ Moreover, the State did not register many infants, so the next of kin of those who died in infancy could not procure death certificates.⁷⁸ Because the Court only received a list of names of individuals who died, it could not determine all the individuals who suffered a violation of Article 3 (Right to Juridical Personality).⁷⁹ However, as to the named individuals who were de-

71. *Id.* “Operative Paragraphs” ¶ 4.

72. *Id.* ¶ 183.

73. *Id.* ¶¶ 227, 231, 234.

74. *Id.* ¶ 234.

75. *Id.* ¶ 275, “Operative Paragraphs” ¶ 6.

76. *Id.* ¶ 252.

77. *Id.* ¶ 246.

78. *Id.*

79. *Id.* ¶ 253.

ceased, the Court found that the State violated Article 3 (Right to Juridical Personality) by failing to legally recognize these Community members.⁸⁰

The Court found unanimously that Paraguay had violated:

Article 5(1) (Right to Physical, Mental, and Moral Integrity) in relation to Article 1(1) of the Convention, to the detriment of the Community,⁸¹ because:

Due to the separation from their lands, the number of deaths in the Community, and the poor living conditions of the estancias, members of the Community suffered for years while waiting for the State to return its lands.⁸² The State, by depriving the Community of its land, violated the Community members' "mental and moral integrity" under Article 5(1) (Right to Physical, Mental, and Moral Integrity) of the American Convention.⁸³

Article 19 (Rights of the Child) in relation to Article 1(1) of the Convention, to the detriment of the children of the Community,⁸⁴ because:

Children have special rights that must be observed by the State.⁸⁵ In particular, children must have adequate access to education, health care, and nutrition, and indigenous children have a special right to cultural life.⁸⁶ However, the indigenous children of the Community lacked access to adequate nutrition and vital vaccines, which led to the death of eleven children.⁸⁷ Moreover, the State's failure to protect the Community's children resulted in their inhibited development and growth.⁸⁸ For these reasons, the State violated Article 19 (Rights of the Child).⁸⁹

80. *Id.* ¶¶ 253–54.

81. *Id.* ¶ 275, “Operative Paragraphs” ¶ 5.

82. *Id.* ¶ 243.

83. *Id.* ¶ 244.

84. *Id.* ¶ 275, “Operative Paragraphs” ¶ 8.

85. *Id.* ¶ 257.

86. *Id.* ¶¶ 258–59, 262.

87. *Id.* ¶ 260.

88. *Id.* ¶¶ 259–60, 264.

89. *Id.* ¶ 264.

The Court found unanimously that Paraguay had not violated:

Article 3 (Right to Juridical Personality), to the detriment of the Community,⁹⁰ because:

*The Community did not provide adequate evidence or arguments on this matter.*⁹¹

C. Dissenting and Concurring Opinions

1. Concurring Opinion of Judge Eduardo Vio Grossi

In a separate opinion, Judge Vio Grossi concurred with the judgment, writing separately to express his approval of the Judgment's modern approach to human rights violations, not just as violations of the individual indigenous people, but also of indigenous people as a "human collective with international legal personality."⁹²

2. Concurring and Dissenting Opinion of Judge *Ad Hoc* Augusto Fogel Pedrozo

In a separate opinion, Judge Fogel Pedrozo concurred with many of the Court's findings of violations and its denial to stop pleadings as had been requested by the State; however, he dissented with the Court's findings as to violations of six of the articles.⁹³

Regarding Article 1(1) (Obligation of Non-Discrimination), Judge Fogel Pedrozo believed the State did not intentionally discriminate.⁹⁴ Regarding Article (3) (Right to Juridical Personality), he believed the State rectified documentation problems with INDI's "indigenous identity card[s]," and by providing transportation when the Community requested it.⁹⁵ Regarding Article 4(1) (Prohibition of Arbitrary Depriva-

90. *Id.* "Operative Paragraphs" ¶ 7.

91. *Id.* ¶ 255.

92. *Xákmok Kásek Indigenous Community v. Paraguay*, Merits, Reparations, and Costs, Concurring Opinion of Judge Eduardo Vio Grossi, Inter-Am. Ct. H.R. (ser. C) No. 214, ¶¶ 1–4 (Aug. 24, 2010).

93. *Xákmok Kásek Indigenous Community v. Paraguay*, Merits, Reparations, and Costs, Concurring and Dissenting Opinion of Judge *Ad Hoc* Augusto Fogel Pedrozo, Inter-Am. Ct. H.R. (ser. C) No. 214, ¶¶ 1, 14–15, 24, 30, 34 (Aug. 24, 2010).

94. *Id.* ¶ 34.

95. *Id.* ¶¶ 30–31.

tion of Life), he believed the Community members were at fault for not promptly complaining of negligence or requesting ambulances or the aid of the Community's "health extension worker."⁹⁶ Additionally, he believed the State's duties should be viewed in light of its available resources, indicating that the "international community" also has duties to help extreme poverty.⁹⁷ Regarding Articles 8(1) (Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal) and 25 (Right to Judicial Protection), he believed the Community failed to pursue the State's effective domestic remedies.⁹⁸ Finally, regarding Article 21 (Right to Property), he believed the steps the Community took to protect their property rights were not effective because of a lack of "norms under domestic law."⁹⁹

IV. REPARATIONS

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

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

1. Judgment as a Form of Reparation

The Court explained that the Judgment itself was a *per se* form of reparation.¹⁰⁰

2. Return Traditional Territory Claimed

The Court ordered that the State must return the 10,700 hectares of land to the Community, explaining that the State must identify the "territory and its borders" and allow the Community to be a part of the process.¹⁰¹ Finally, the State, after giving weight to the connection "indigenous peoples have with their lands," must return the land, or, if it is necessary to offer alternative land, decide on the specific piece of land

96. *Id.* ¶¶ 17–18.

97. *Id.* ¶¶ 25, 27.

98. *Id.* ¶ 15.

99. *Id.* ¶ 14.

100. *Xákmok Kásek Indigenous Community v. Paraguay, Merits, Reparations, and Costs, "Operative Paragraphs" ¶ 11.*

101. *Id.* ¶ 283, "Operative Paragraphs" ¶ 12.

with the Community's input.¹⁰²

3. Protect Traditional Territory Claimed

The Court ordered that the State must ensure the land is not “deforested,” the areas of cultural significance are not destroyed, the land is not transferred, and no irreversible damage happens.¹⁰³

4. Grant “25 de Febrero” Title

The Court ordered that the State must eliminate all obstacles to granting title to the 1,500 hectares titled “25 de Febrero,” on which the Community is residing, and remedy the Community leaders' registration problems.¹⁰⁴

5. Publicly Acknowledge International Responsibility

The Court ordered that the State must hold a ceremony held at “25 de Febrero” in the Community's languages in order to publicly acknowledge its responsibility.¹⁰⁵ Furthermore, the State must ensure that the Community participates in the ceremony, which must involve senior State authorities.¹⁰⁶ The State must provide any necessary transportation for the Community, as well as broadcast the ceremony on a radio station capable of reaching the Chaco audience.¹⁰⁷

6. Publish the Judgment

The Court ordered that the State must publish the Judgment in the official newspaper, to include the operative paragraphs and other paragraphs laid out by the Court, along with chapter headings and sections.¹⁰⁸ Additionally, the Court ordered the State to publish the Court's official summary of the Judgment in a national daily newspaper and the Judgment in full on the an official State website for one year.¹⁰⁹

102. *Id.* ¶¶ 284, 286.

103. *Id.* ¶ 291, “Operative Paragraphs” ¶ 13.

104. *Id.* ¶¶ 292–93, “Operative Paragraphs” ¶¶ 14–15.

105. *Id.* ¶ 297, “Operative Paragraphs” ¶ 16.

106. *Id.* ¶ 297.

107. *Id.*

108. *Id.* ¶ 298, “Operative Paragraphs” ¶ 17.

109. *Id.* ¶ 298.

7. Broadcast the Judgment

The Court ordered that the State broadcast the Court's official summary of the Judgment, translated into native Chaco languages, through a radio station reaching Chaco, four times on the first Sunday of the month.¹¹⁰ When these broadcasts are complete, the State must send a recording of each broadcast to the Court.¹¹¹

8. Provide Goods and Basic Services

Until the Community is allowed to settle on its permanent land, the Court ordered that the State give the Community adequate physical and mental health care, paying special attention to the young and elderly, including vaccinations, "deparasitization campaigns," and care for new and expectant mothers.¹¹² Additionally, the Court ordered the State to provide adequate water, food, sanitation, and education, making sure to respect the community's traditions and native language.¹¹³ The Court also ordered the State to complete and send to the Court a study as to the adequacy of these measures, using experts and including Community members' perspectives.¹¹⁴ Additionally, the Court ordered the State to implement a permanent medical facility and a communication system with transportation for emergencies at the "25 de Febrero" location.¹¹⁵ Finally, the Court ordered the State to later relocate the medical facility and communication system to the Community's final settlement.¹¹⁶

9. Implement Registration and Documentation Programs

The Court ordered the State to establish a program through which Community members can register and procure identity documents.¹¹⁷

110. *Id.* ¶ 299, "Operative Paragraphs" ¶ 18.

111. *Id.*

112. *Id.* ¶ 301, "Operative Paragraphs" ¶ 19.

113. *Id.*

114. *Id.* ¶¶ 303–04, "Operative Paragraphs" ¶ 20.

115. *Id.* ¶ 306, "Operative Paragraphs" ¶¶ 21–22.

116. *Id.* ¶ 306, "Operative Paragraphs" ¶ 23.

117. *Id.* ¶ 308, "Operative Paragraphs" ¶ 24.

10. Adapt Domestic Law to Conform to the Convention

The Court ordered that the State add update domestic law to include effective procedures for indigenous communities to recover traditional land, including fairer “substantive norms” and a capable judicial authority.¹¹⁸

11. Ensure the Non-Interference of Decree No. 11804

The Court ordered that the State take the required steps so that Decree No. 11804, which stated that a portion of the traditional territory was protected private land, would not prevent the Community from receiving their claimed land.¹¹⁹

B. Compensation

The Court awarded the following amounts:

1. Pecuniary Damages

The Court awarded \$10,000.00 to the Community to compensate for travel expenses.¹²⁰

2. Non-Pecuniary Damages

The Court awarded \$700,000 for a community development fund to develop water and sanitation infrastructures, as well as education, housing, and healthcare programs, as chosen by a committee that includes a Community representative, a State representative, and a third party agreed on by both parties.¹²¹ Additionally, the Court awarded \$260,000 to be given to the Community leaders to compensate for the death of certain Community members.¹²² The Community leaders shall distribute this amount to the families of those who died as they see fit.¹²³

118. *Id.* ¶ 310, “Operative Paragraphs” ¶ 25.

119. *Id.* ¶¶ 312–13, “Operative Paragraphs” ¶ 26.

120. *Id.* ¶ 318.

121. *Id.* ¶¶ 323–24.

122. *Id.* ¶ 325.

123. *Id.*

3. Costs and Expenses

The Court awarded \$25,000 for litigation expenses to be paid to Community leaders, who shall pay Tierraviva for its representation.¹²⁴ Furthermore, the Court reserved the ability to require the State to reimburse the victims or their representatives for their costs.¹²⁵

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

\$ 995,000

C. Deadlines

The State must identify the Community's traditional territory and borders within one year from notification of the Judgment and return the land within three years from notification of the Judgment.¹²⁶ The State may request a one year extension, which, if granted, would require it to pay the Community leaders \$10,000 for each extra month needed for compliance.¹²⁷

The State must immediately comply with the Court's order to protect the traditional territory claimed.¹²⁸

The State must remove obstacles to title registration and resolve registration discrepancies within six months from notification of the Judgment, and it must grant title within one year from notification of the Judgment.¹²⁹

The State must comply with the Court's order to complete a public act of acknowledgment of responsibility within one year from notification of the Judgment.¹³⁰

The State must comply with the Court's order to publish the Judgment within six months from notification of the Judgment.¹³¹

The State must comply with the Court's order to broadcast the Judgment within six months from notification of the Judgment.¹³²

124. *Id.* ¶ 331.

125. *Id.*

126. *Id.* ¶¶ 283, 285.

127. *Id.* ¶¶ 287–88.

128. *Id.* “Operative Paragraphs” ¶ 13.

129. *Id.* ¶ 293, “Operative Paragraphs” ¶¶ 14–15.

130. *Id.* “Operative Paragraphs” ¶ 16.

131. *Id.* ¶ 298.

132. *Id.* ¶ 299.

The State must immediately comply with the Court’s order to provide goods and basic services on the Community’s temporary land and must immediately implement the communication system.¹³³ The State must complete the study and construct the permanent medical facility within six months of notification of the Judgment and, once the land transfer is finalized, move the facility and communication system at that time.¹³⁴

The State must comply with the Court’s order to establish a registration and documentation program within one year from notification of the Judgment.¹³⁵

The State must comply with the Court’s order to adapt domestic laws within two years from notification of the Judgment.¹³⁶

The State must immediately ensure that Decree No. 11804 does not prevent the Community from receiving its land.¹³⁷

The State must pay all \$995,000 within two years from notification of the Judgment.¹³⁸ The State must create the community development fund within six months after land has been given to the Community and complete the related projects within two years after land has been given to the Community.¹³⁹

The State must give the Court a report on its measures to comply with the Judgment within six months from notification of the Judgment.¹⁴⁰

V. INTERPRETATION AND REVISION OF JUDGMENT

[None]

VI. COMPLIANCE AND FOLLOW-UP

June 14, 2015: The Court found the State fully complied with its obligation to remove obstacles to granting title to “25 de Febrero.”¹⁴¹ The

133. *Id.* ¶¶ 301, 303, 306, “Operative Paragraphs” ¶¶ 19–23.

134. *Id.*

135. *Id.* “Operative Paragraphs” ¶ 24.

136. *Id.* “Operative Paragraphs” ¶ 25.

137. *Id.* “Operative Paragraphs” ¶ 26.

138. *Id.* “Operative Paragraphs” ¶ 27.

139. *Id.* ¶¶ 323–24.

140. *Id.* “Operative Paragraphs” ¶ 29.

141. *Xákmok Kásek Indigenous Community v. Paraguay*, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R., “Resolves” ¶ 1 (June 24, 2015) (Available only in Spanish).

Court will continue to monitor compliance regarding the State's remaining obligations under the Judgment, including returning the 10,700 hectares of traditional land, ensuring it is not harmed in the meantime, and granting title to "25 de Febrero."¹⁴² Furthermore, the Court found that the State owed \$90,000 to the Community as a result of its nine months of delayed compliance.¹⁴³ The Court ordered the State to submit a joint report on compliance of the Judgment by December 4, 2015.¹⁴⁴

VII. LIST OF DOCUMENTS

A. *Inter-American Court*

1. Preliminary Objections

[None]

2. Decisions on Merits, Reparations and Costs

[Xákmok Kásek Indigenous Community v. Paraguay, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. \(ser. C\) No. 214 \(Aug. 24, 2010\).](#)

[Xákmok Kásek Indigenous Community v. Paraguay, Merits, Reparations, and Costs, Concurring Opinion of Judge Eduardo Vio Grossi, Inter-Am. Ct. H.R. \(ser. C\) No. 214 \(Aug. 24, 2010\).](#)

[Xákmok Kásek Indigenous Community v. Paraguay, Merits, Reparations, and Costs, Concurring and Dissenting Opinion of Judge *Ad Hoc* Augusto Fogel Pedrozo, Inter-Am. Ct. H.R. \(ser. C\) No. 214 \(Aug. 24, 2010\).](#)

3. Provisional Measures

[Xákmok Kásek Indigenous Community v. Paraguay, Provisional Measures, Order of the President of the Court, Inter-Am. Ct. H.R. \(ser. E\) \(Mar. 8, 2010\) \(Available only in Spanish\).](#)

142. *Id.* "Resolves" ¶ 2, "Considering That" ¶ 28.

143. *Id.* "Resolves" ¶ 3.

144. *Id.* "Resolves" ¶ 5.

4. Compliance Monitoring

[Xákmok Kásek Indigenous Community v. Paraguay, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R. \(June 24, 2015\) \(Available only in Spanish\).](#)

5. Review and Interpretation of Judgment

[None]

B. Inter-American Commission

1. Petition to the Commission

[Not Available]

2. Report on Admissibility

[Xákmok Kásek Indigenous Community v. Paraguay, Admissibility Report, Report No. 11/03, Inter-Am. Comm'n H.R. \(Feb. 20, 2003\).](#)

3. Provisional Measures

[None]

4. Report on Merits

Xákmok Kásek Indigenous Community v. Paraguay, Report on Merits, Report No. 30/08, Inter-Am. Comm'n H.R. (July 17, 2008).

5. Application to the Court

[Xákmok Kásek Indigenous Community v. Paraguay, Application to the Court, Inter-Am. Comm'n H.R., Case No.12.420 \(July 3, 2009\).](#)

VIII. BIBLIOGRAPHY

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Thomas M. Antkowiak, *Rights, Resources, and Rhetoric: Indigenous Peoples and the Inter-American Court*, 35 U. PA. J. INT'L L. 113 (2013).

Dinah Shelton, *The Inter-American Human Rights Law of Indigenous Peoples*, 35 U. HAW. L. REV. 937 (2013).