



Yakye Axa Indigenous Community of the Enxet-Lengua People v. Paraguay

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Country: Paraguay

Region: Americas

Year: 2005

Court: Inter-American Court of Human Rights Inter-American Court of Human Rights

Health Topics: Aging, Child and adolescent health, Diet and nutrition, Health care and health services, Poverty

Human Rights: Freedom of movement and residence, Right to a clean environment, Right to due process/fair trial, Right to food, Right to health, Right to housing, Right to life, Right to property, Right to water and sanitation, Rights to the benefits of culture

Facts

Petitioners, leaders of the Yakye Axa indigenous community of the Enxet-Lengua people, filed suit against the Republic of Paraguay alleging violations articles 4 (right to life) and 25 (right to judicial Protection) of the American Convention on Human Rights (the Convention). They further alleged that Paraguay ignored article 27 of the International Covenant on Civil and Political Rights and articles 1(2), 2(1), 4(1) and 5(a) of the International Labor Organization's Convention 169. Petitioners claimed Paraguay failed to provide the Yakye Axa indigenous community with adequate assistance during the processing of its claim over traditional territories. They also claimed Paraguay failed to conclude the administrative processing of the community's bid to recover the lands and prevented it from conducting its traditional subsistence economic activities, including hunting, fishing and gathering.

Petitioners claimed that automobile exhaust fumes and dust from traffic on roads in the community had a deleterious impact on the health of the Yakye Axa. Petitioners noted that four people in the community had died from bronchial and respiratory diseases and most of the children suffered from respiratory ailments. Moreover, the medical conditions were not attended to because of a lack of access to health services. The situation was made worse by a food shortage that resulted from a court order instructing the community to refrain from hunting and fishing on ancestral lands. The court order thus prevented the community from acquiring basic foodstuffs.

The Yakye Axa community's degraded nutritional and health situation was recognized by Paraguay in an official decree in 1999. Paraguay declared the community to be in a state of emergency and ordered its members medical and nutritional assistance for as long as their land claim was being processed. Despite this express recognition, however, the provision of medical and nutritional assistance was scant and insufficient.

Friendly Settlement proceedings were subsequently initiated in the Inter-American Commission on Human Rights. However, Petitioners withdrew from the negotiations after a criminal judge in Paraguay ordered the removal of the Yakye Axa's houses from land under the jurisdiction of the Traffic Office. Petitioners claimed that the Yakye Axa had not been allowed to appoint an attorney during the removal proceedings. Moreover, Paraguay had agreed to guarantee the community's continued peaceful occupation of this land during Friendly Settlement proceedings.

The Commission asked that precautionary measures be adopted and Paraguay responded. The president of the Supreme Court of Justice and minister in charge of human rights matters asked the judge responsible for ordering the removal of the Yakye Axa's homes to remit the case file to him. The judge also requested the public works and interior ministries suspend all eviction proceedings affecting the community. Petitioners appreciated the State's response but complained that it was only a partial solution.

Decision and Reasoning

The Commission declared the petition admissible. Petitioner's allegations tended to establish violations of articles 4 (right to life) and 25 (right to judicial protection) of the Convention. In addition, in light of recent case law on indigenous property rights from the Inter-American Court of Human Rights, the allegations tended to

establish violations of articles 21 (right to property) and 8 (right to a fair trial) of the Convention.

Decision Excerpts

“Despite the State's express recognition, in the aforementioned decree, of the indigenous community's emergency situation, the “provision of medical and nutritional assistance”™ ordered by the President of the Republic for the community's families has been scant and insufficient.”• Para. 25.

“The Commission notes that more than eight years have gone by since the representatives of the Yakye Axa indigenous community began proceedings to recover their ancestral lands and that, to date, the authorities have not resolved the matter; and that, with the application of the unwarranted delay exception, there has been no final decision under domestic law since exhaustion has been waived; consequently, the IACHR maintains that the petition was lodged within the “reasonable period of time”™ described by the Convention.”• Para. 40.

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