



REPORT Nº 12/03

PETITION 322/01

ADMISSIBILITY

SAWHOYAMAXA INDIGENOUS COMMUNITY OF THE ENXET PEOPLE

PARAGUAY

February 20, 2003

1. SUMMARY

1. On May 15, 2001, the Inter-American Commission on Human Rights (hereinafter "the Commission" or "the IACHR") received a petition submitted by the non-governmental organization *Tierraviva para los Pueblos Indígenas de Chaco*, TIERRAVIVA (hereinafter "the petitioners") in representation of the Sawhoyamaxa Indigenous Community of the Enxet People and its members (hereinafter the "Sawhoyamaxa Indigenous Community" or the "Indigenous Community") against the Republic of Paraguay (hereinafter "the Paraguayan State" or "the State"). In the petition, it is alleged that the Paraguayan State has violated Articles 1 (obligation to respect the rights), 2 (duty to adopt provisions of domestic law), 8(1) (right to a fair trial), 21 (right to private property), and 25 (judicial protection), all of the American Convention on Human Rights (hereinafter "the Convention" or "the American Convention") to the detriment of the Indigenous Community and its members.

2. The petitioners argue that more than 11 years have gone by since the procedures were first set in motion to recover part of the ancestral lands of the Sawhoyamaxa Indigenous Community, yet to date that initiative has not been favorably resolved, even though Paraguayan legislation recognizes the right of the indigenous peoples to develop their ways of life in their own habitat, and that the State has not protected the lands claimed. In addition, they argue that the members of the Community are living in sub-human conditions; as a result, several people, including minors, have died due to lack of adequate food and lack of medical care. As regards the admissibility requirements, the petitioners allege that their petition is admissible by virtue of the exceptions to the requirement of prior exhaustion of domestic remedies set out at Article 46(2) of the Convention.

3. The State, for its part, in its first communication, stated that in keeping with the Ministry of Foreign Affairs policy of participating with the international human rights bodies, it is considered that cases that have been presented that meet the requirements for being addressed internationally have priority for the Government of Paraguay, and as the complaint lodged on behalf of the Sawhoyamaxa has such characteristics, it expressed its interest in reaching a friendly settlement.

4. The Commission, after analyzing the parties' positions and compliance with the

requirements provided for in Articles 46 and 47 of the Convention, concluded that it is competent to take cognizance of the claim, and declared the petition admissible with respect to Articles 2, 8(1), 21, and 25 of the Convention, in conjunction with Article 1(1).

II. PROCESSING BY THE COMMISSION

5. On May 15, 2001, the Commission received the petition against the Paraguayan State, and on June 6 it received additional information from the petitioners. On June 7, 2001, the Commission transmitted the pertinent parts to the State, and requested that it submit a response to the petition within two months.

6. On August 1, 2001, the State expressed its interest in pursuing a friendly settlement, and on August 2, the Commission requested the petitioners to submit their observations within 15 days.

7. On August 27, 2001, the Commission called the parties to a working meeting on October 1, to discuss issues related to the petition; that meeting was postponed to November 13. On October 22, 2001, the State forwarded additional information to the Commission, which was transmitted to the petitioners on October 26.

8. On November 13, 2001, during the 113th regular session of the Commission, in the framework of a working meeting, the parties signed an "Agreement to Seek Common Ground" (*"Acuerdo de Acercamiento de Voluntades"*).

9. On June 18, 2002, the petitioners submitted additional information, which was transmitted to the State for its observations. In addition, on June 28, 2002, the State submitted additional information, which was forwarded to the petitioners for their observations.

10. On December 24, 2002, the petitioners informed the Commission of its decision to withdraw from the friendly settlement process; that note was transmitted to the State on December 27, requesting that it submit its arguments on admissibility within 30 days.

11. On December 8, 2002, the Commission, through the Executive Secretariat, visited the Sawhoyamaxa Community.

12. On January 27, 2003, the State informed the IACHR that it would submit its observations in response to the Commission's note of December 27 as soon as possible. On January 29, it requested 10 more days to submit them. On February 10, 2003, the State submitted its observations.

A. Friendly settlement process

13. In its first answer brief the State asked the IACHR to mediate an effort to reach a friendly settlement. On November 13, 2001, during the 113th regular session of the IACHR, the parties signed an "Agreement to Seek Common Ground" in which they undertook to begin negotiations in an effort to reach a friendly settlement. In the framework of this process, the parties held meetings in Asunción, Paraguay.

14. On December 24, 2002, the petitioners informed the Commission of the decision by the Sawhoyamaxa Community to withdraw from the process of direct negotiations with the Government, and to consider terminated the agreement to seek common ground that had been signed November 13, 2001 by the parties, in view of the lack of results obtained in the framework of the friendly settlement effort offered by the Paraguayan State, the time elapsed, and the absence of concrete measures of reparation for the violations alleged. The

State, in its observations of February 10, 2003, lamented the petitioners' decision to end the process of pursuing a friendly settlement, and expressed its decision to continue making the necessary efforts to reach such a settlement. It added that ending the friendly settlement effort and taking indigenous cases to an adversarial stage could be to the detriment, rather than the benefit, of the general interest, in this case the rights of the indigenous peoples.

III. THE PARTIES' POSITIONS

A. The petitioners

15. The petitioners allege that the Paraguayan State has violated Articles 1(1), 2, 8(1), 21, and 25 of the Convention, to the detriment of the Sawhoyamaxa Indigenous Community of the Enxet People and its members by failing to restore to the Community part of its ancestral lands. They add that the Paraguayan Constitution recognizes the right of indigenous peoples to develop their ways of life in their own habitat,^[1] without the State, to this day, having resolved to provide their ancestral lands to the Indigenous Community.

16. The petitioners indicate that in 1991, the Indigenous Community, through its leaders, began to take administrative steps *vis-a-vis* the competent agencies, i.e. the Institute of Rural Well-being (IBR: *Instituto de Bienestar Rural*) and the Paraguayan Institute on Indigenous Affairs (INDI: *Instituto Paraguayo del Indígena*), in order to secure restitution of part of their ancestral lands. The steps were taken in the context of the procedure established in Law No. 904/81, "Status of Indigenous Communities," opening up administrative record No. 7,597/91 of the IBR.

17. The petitioners add that after several years of efforts, in 1997 the INDI^[2] established that the steps taken in file No. 7,597/91 and the anthropological study performed by the *Centro de Estudios Antropológicos* (CEADUC) of the *Universidad Católica Nuestra Señora de Asunción* fully demonstrated that the area claimed by the Sawhoyamaxa Indigenous Community was within the traditional habitat of the Enxet, adding that "each additional period of time that passes represents a serious attack on the integrity of the indigenous habitat claimed due to the pressure and acts of economic groups interested in the resources of the Western region" and resolved "to support fully the claim of the Sawhoyamaxa Indigenous Communities and suggest to the IBR that it consider terminated its administrative role within its limits and request where appropriate the expropriation of the real properties claimed by the Indigenous Community."

18. By virtue of that resolution of the INDI, on May 13, 1997, the leaders of the Indigenous Community, with the sponsorship of deputies Andrés Avelino Díaz and Juan Carlos Ramírez Montalbetti, went before the Chamber of Deputies of the Congress calling on it to adopt a law for the expropriation of approximately 14,404 hectares^[3] corresponding to part of its traditional habitat. In June 1998, the sponsoring deputies decided to withdraw the proposed law, after the negative report of the Committee on Human Rights and Indigenous Affairs of the Chamber, and they decided to submit it in a subsequent legislative session. In June 1999, the indigenous leaders from the community present a new request for expropriation to the Senate, with the sponsorship of Senator Juan Carlos Ramírez Montalbetti. On November 16, 2000, the Senate dismissed the request for expropriation by Resolution No. 692.

19. In relation to the exhaustion of domestic remedies, i.e., the administrative and legislative remedies provided for in Paraguay's domestic law, the petitioners allege that the Sawhoyamaxa Community has made all possible efforts, in keeping with the principles of international law, to uphold its property right over its traditional lands.

20. They add that while the community had access to the remedies provided for

in Paraguay's domestic jurisdiction, and that they pursued such remedies in a timely and procedurally correct fashion, they have not been effective in restoring the Community's right to its lands. The petitioners state that more than 10 years have elapsed since the Indigenous Community began the procedures provided for by the Paraguayan State necessary for claiming part of its traditional habitat without, to date, any definitive resolution.

21. In the context of the proceeding for claiming their ancestral habitat, and in keeping with Paraguay's domestic law, in December 1993 the Community sought a preliminary injunction from the courts to prevent changes from being made on the lands, and another judicial measure noting litigation pending^[4] over the community's ancestral property, for the purpose of safeguarding its expectant rights over the property claimed. In July 1994, the court awarded the measures sought and ordered its entry in the corresponding public registry. Nonetheless, despite the issuance of those protective measures, there was indiscriminate cutting of approximately 1,250 hectares of undeveloped brush and forest on the property, and there was a transfer of title by one who figured as the owner of the area claimed.

22. The petitioners also argue that the 87 families^[5] that constitute the Indigenous Community are living in sub-human conditions alongside the highway running from Pozo Colorado to Concepción, in the department of Presidente Hayes, Chaco. The petitioners state that the deplorable situation in which the members of the Indigenous Community are living was verified by the IACHR during the on-site visit to Paraguay in 1999, and during the December 2002 visit.^[6] They add that the Paraguayan State recognized the Community's grave health and food situation through Decree No. 3789/99 of June 23, 1999, which declared the community to be in a state of emergency, and ordered that it be given health and food assistance for the duration of the process of claiming its traditional habitat.

23. Despite the emergency situation declared by the Executive, the petitioners emphasize that the Community's living conditions in recent years have deteriorated quickly, to the point that its very existence as a human group is endangered. They note that the epidemics and malnutrition are recurrent and fatal in Sawhoyamaxa, with more than 10 deaths due to curable diseases among children and the elderly since 1995. In early 2001, three minors died due to gastrointestinal problems that result from the living conditions, among which they mention the food scarcity and the lack of drinking water. Minors do not receive medical care.

24. The petitioners indicate that another 10 years have elapsed since the claim was submitted to the Paraguayan State, and the authorities have done nothing to guarantee at least a minimal part of land for the Indigenous Community, or to make reparation for the dispossession and clearing of their ancestral lands, including the grave consequences for the well-being and integrity of the Community.

B. The State

25. The State, in its first brief setting forth its observations, stated:

It is considered that the cases that have been submitted, meeting the due requirements for being addressed in an international mechanism, are those which, so identified, have priority for the Government of Paraguay, and should be so addressed to make progress in improving the human rights situation in the country.

As this case has such characteristics, the Government of Paraguay would like to reach a friendly settlement with the petitioners; accordingly, it requests that the Inter-American Commission on Human Rights mediate for this purpose.

26. In addition, the State provided the Commission information on the administrative procedures for acquiring lands through the Institute for Rural Well-being (IBR) as well as the steps taken by the government to assist the indigenous community in view of the presidential decree that declared them to be in a state of emergency.

27. The State also provided information to the Commission on Presidential Decree No. 3789/99 of June 23, 1999, which declared the Sawhoyamaxa Community to be in a state of emergency and ordered that it be provided health and food assistance. The Decree establishes, in part, as follows:

That the Sawhoyamaxa community of the Enxet people, made up of 63 families, currently makes a claim of 15,000 hectares of its traditional territory, and, as they await the solution to their claim by the state agencies, several families of the community are settled alongside the route that runs from Pozo Colorado to Concepción, along the border of the lands claimed, at kilometer 100 of that section.

That these communities are deprived of access to the traditional means of subsistence linked to their cultural identity, by the owners' refusal to allow them to enter the habitat they claim as part of their ancestral territories.

That this circumstance, currently before administrative and judicial fora, hinders the normal development of the life of these native communities, due to the lack of minimal and essential food and medical care is a matter of concern to the Government that demands an urgent response.

That, it being in the public interest to protect the preservation of the indigenous peoples of the nation in keeping with clear provisions contained in chapter V of the National Constitution, laws 904/84 "Status of the indigenous communities," and 234/93, "Approving ILO Convention 169," and it being an obligation of the State to provide public assistance and relief to prevent and treat cases of peremptory needs, in keeping with the above-noted law, to the Yaxye Axa and Sawhoyamaxa Indigenous Communities.

THEREFORE,

THE PRESIDENT OF THE REPUBLIC OF PARAGUAY DECREES:

Article 1. It is hereby declared that the Yaxye Axa and Sawhoyamaxa indigenous communities of the Enxet-Speaking People of the District of Pozo Colorado of the Department of Presidente Hayes, Paraguayan Chaco, are in a state of emergency.

Article 2. It is ordered that the *Instituto Paraguayo del Indígena* in conjunction with the Ministries of Interior and Public Health and Social Well-being carry out the corresponding actions immediately to provide medical care and food assistance to the families that make up the communities indicated, for the duration of the judicial proceedings regarding the legislation on the lands claimed as part of their traditional habitat.

28. As for the process in respect of the claim, the State reported that the lands requested by the Indigenous Community were declared to be part of their traditional habitat by the INDI; nonetheless, it stated in its brief of February 10, 2003, that the owner of the area requested by the Indigenous Community is a German investor who has repeatedly communicated to the government authorities his refusal to sell his property to the INDI, for it

to be subsequently transferred to the Community. It adds that the owner of the property is protected by a treaty between the Republic of Paraguay and the Federal German Republic on fostering and providing mutual protection for capital investments, which was approved by the Legislative branch, and promulgated by the Executive, which provides that "the capital investments of nationals or corporations of one of the Contracting Parties may not, in the territory of the other Contracting Party, be expropriated, nationalized, or subjected to other measures which, in their repercussions, are equivalent to expropriation or nationalization, other than for public use or interest, and in such case compensation must be paid."

29. The State indicates that there is no lack of will or commitment on the part of the State to find a solution to the problems posed; "rather, in the case in question, the fact that the lands are privately owned and not government lands, in addition to the State's difficult financial situation, are obstacles in the process, with the caveat that they are not insurmountable." It adds, in this respect, that the State is under an obligation to indicate expressly "that it has not obstructed or interfered negatively in the administrative procedure, to the detriment of the legitimate rights of the Sawhoyamaxa Community, through any government institution or the agents thereof." The Executive, through the INDI, made every effort on behalf of the expropriation of the area claimed by the Indigenous Community, with unfavorable results because the Legislative branch did not approve the expropriation.

30. The State indicates that the decision to pull out of the friendly settlement procedure that the members of the Sawhoyamaxa Community came to, advised by the non-governmental organization TIERRAVIVA "places at risk a definitive solution to the land problem, on failing to acknowledge the major efforts made by the State to vindicate the rights of the Sawhoyamaxa, in keeping with the mandate of the Constitution, the Convention, and other international and domestic legal instruments."

31. In relation to the admissibility requirements, the State argues that the petition is not admissible for failure to exhaust domestic remedies and because some parts of the complaint do not set forth facts which, if true, would tend to establish a violation of rights, as per Article 34 of the Rules of Procedure.

32. With respect to the first argument, the State says that the petitioners did not exhaust domestic remedies and it identifies three remedies still pending: First, the institution in charge of processing the request for the land, i.e. the INDI, intends to present a new request to the new National Congress, which will be installed in July 2003, for the expropriation of the lands claimed by the Community. Second, the direct purchase of the property could eventually be negotiated with the owner, based on a reformulation of the claims regarding the extent of the land, safeguarding the interest of the Community. And third, the mechanism established in Convention 169 of the International Labor Organization, on Indigenous and Tribal Peoples, in conjunction with Articles 14 and 15 of Law 904/81, on the Status of the Indigenous Communities, remains to be exhausted. This latter mechanism would be invoked to request the prior, free, and express consent of the Community to a possible transfer to other lands of equal extent and quality.

33. In addition, it states that the Republic of Paraguay has an adequate legal framework for protecting the right or rights alleged to have been violated in this petition, specifically, the right to community property of the Sawhoyamaxa Community, and it bases its assertion on the fact that the institution in charge of processing the request for the lands sought by the Community, i.e. the INDI, at present continues to make efforts to purchase the property claimed by the Indigenous Community, and it argues that the delay in arriving at a final solution of the Community's petition has been warranted for the above-indicated reasons.

34. With respect to the failure to set forth facts which, if true, would tend to establish a violation of rights, and with respect to Article 2 of the Convention, the State

indicates that all necessary measures of domestic law have been adopted to comply with the obligations derived from international human rights law, in particular with respect to rights of indigenous peoples, and in the case of the Sawhoyamaxa Community, the State adopted an adequate legal framework such that today, that community is in a position to claim its ancestral lands. As for the alleged violation of Articles 8 and 25 of the Convention, the State does not accept the petitioners attributing responsibility to the State, because in the administrative realm, all necessary steps for the Indigenous Community to be able to make the claim of possession and ownership of its ancestral lands have been taken effectively, nonetheless it has not been possible to render the claim effective due to budgetary problems and the refusal of the Legislative branch, in this case, to accept the request for expropriation on behalf of the Community. In addition, as regards the alleged violation of Article 21 of the Convention, it states that it does not repudiate or reject the right to community ownership of the land of the Sawhoyamaxa Community.

35. The State indicates in its arguments that both the National Government and the organizations who represent the Sawhoyamaxa seek to satisfy the claim to their ancestral lands, which is why recourse was had to the friendly settlement procedure before the Commission, adding that the current state of the processing of the petition by the Indigenous Community before the Paraguayan authorities does not imply the denial of rights by the State, but the impossibility of realizing them and thereby satisfying the basic needs of the Sawhoyamaxa community so that they can develop their traditional activities.

IV. ANALYSIS OF COMPETENCE AND ADMISSIBILITY

A. Competence of the Commission *ratione loci*, *ratione personae*, *ratione temporis*, and *ratione materiae*

36. The petitioners are authorized by Article 44 of the American Convention to present complaints to the Commission, and, with respect to the alleged victims, i.e. the Sawhoyamaxa Community and its members,^[7] the Paraguayan State undertook to respect and ensure the rights enshrined in the Convention. As for the State, the Commission observes that Paraguay is a state party to the American Convention, having ratified it on August 24, 1989. Accordingly, the Commission is competent *ratione personae* to examine the complaint.

37. The Commission is competent *ratione loci* to take cognizance of this petition insofar as it alleges violations of rights protected in the American Convention in the territory of a state party.

38. The Commission is competent *ratione temporis* insofar as the facts alleged in the petition took place when the obligation to respect and ensure the rights established in the Convention had already entered into force for the Paraguayan State.

39. Finally, the Commission is competent *ratione materiae*, because the petition alleges violations of human rights contained in the American Convention.

B. Admissibility requirements

1. Exhaustion of domestic remedies

40. Article 46(1)(a) of the Convention establishes as a requirement for a petition to be admitted that domestic remedies first be pursued and exhausted, in keeping with generally recognized principles of international law. Article 46(2)(a) provides that this requirement shall not be applied when (a) the domestic legislation of the state concerned does not afford due process of law for the protection of the right or rights that have allegedly been violated; (b) the party alleging violation of his rights has been denied access to the remedies

under domestic law or has been prevented from exhausting them; or (c) there has been unwarranted delay in rendering a final judgment under the aforementioned remedies. The case-law of the inter-American system is clear in indicating that only those remedies that are adequate and effective need be exhausted.

41. In relation to the recovery of the ancestral territory of the Indigenous Community, the main motive of the petition, the Commission understands that in Paraguay there are two procedures, one administrative before the INDI-IBR, and the other legislative, before the National Congress. The petitioners have gone before both.

42. In effect, it appears from the record that in 1991, the procedures provided for in the domestic legislation for claiming the Community's traditional habitat were initiated before the respective administrative body, i.e. the INDI and the IBR, without, to date, any definitive solution to the petition. In addition, an effort was made to resolve the matter in the Senate, which also went nowhere. This is because the expropriation bills were voted down in the Senate, the only report having been November 16, 2000. In view of the foregoing, 11 years after the pertinent steps were taken by the Sawhoyamaxa indigenous community, it has not secured any decision to have its lands turned over to it.

43. In its arguments on admissibility, the State indicated that the petitioners had not exhausted these two domestic remedies, and that the petition is therefore not admissible. The Commission observes in this respect that when a state argues failure to exhaust domestic remedies, it has the obligation to show the effectiveness of the remedies which, in its view, have not been exhausted. In its arguments, the State has not provided information to make such a showing. In effect, the remedies mentioned by the State have to do with powers of the Executive, whether to submit a new expropriation bill to the National Congress, or to make a new offer to buy the area claimed by the Indigenous Community to the owner. Both remedies cited by the State have already been used in the domestic proceeding with no results, and the State has not shown any prospects for effectiveness.

44. With respect to the alleged failure to exhaust the mechanism established in ILO Convention 169 in conjunction with the Paraguayan law on the Status of the Indigenous Communities, indicating that one must request of the Indigenous Community its consent in order to make it possible for it to be transferred to lands other than those claimed, the Commission finds that it is not a domestic remedy, and therefore it need not be exhausted by petitioners.

45. Therefore, given the characteristics of this case, the Commission considers that as regards a possible legislative remedy, domestic remedies have been exhausted, and, with respect to a possible administrative remedy, there has been unwarranted delay in the decision, triggering the exception provided for at Article 46(2)(c).

2. Time period for lodging a petition

46. Under Article 46(1)(b) of the American Convention, petitions, to be admissible, must be lodged within six months of notification to the allegedly injured party of the judgment exhausting domestic remedies. Article 32 of the Commission's Rules of Procedure establishes: "In those cases in which the exceptions to the requirement of prior exhaustion of domestic remedies are applicable, the petition shall be presented within a reasonable period of time, as determined by the Commission. For this purpose, the Commission shall consider the date on which the alleged violation of rights occurred and the circumstances of each case."

47. In the instant case, the Commission stated *supra* its finding that the exception to the prior exhaustion requirement applies. In this respect, the Commission considers that the petition submitted to the IACHR by the petitioners on May 15, 2001 was filed within a

reasonable time, taking into account the specific circumstances of the case, particularly the fact that the Senate rejected the request for expropriation on November 16, 2000.

3. Duplication of procedures

48. Articles 46(1)(c) and 47(d) of the Convention establish as admissibility requirements that the subject matter of the petition or communication not be pending before another international proceeding for settlement, and that it not be substantially the same as a petition already examined by the Commission or any other international body.

49. It does not appear from the record that the subject matter of the petition is pending any other international proceeding for settlement nor that it reproduces a petition already examined by the Commission or any other international body.

50. Accordingly, the Commission finds that the requirements established in Articles 46(1)(c) and 47(d) of the Convention have been met.

4. Characterization of the facts alleged

51. Article 47(b) of the Convention provides that any petition that "does not state facts that tend to establish a violation of the rights guaranteed by this Convention" shall be inadmissible.

52. The State argues that the complaint does not state facts that tend to establish human rights violations, and that therefore it has not violated, as petitioners state, the rights enshrined in Articles 2, 1(1), 8, 25, and 21 of the American Convention.

53. The Commission considers that it is not appropriate, at this stage of the procedure, to determine whether there has been a violation of the American Convention. For purposes of admissibility, the IACHR must decide whether facts are stated which, if true, would tend to establish a violation, as stipulated by Article 47(b) of the American Convention, and whether the petition is "manifestly groundless" or "obviously out of order," as per Article 47(c).

54. The standard of appreciation of these rules is different from that required for deciding on the merits of the complaint. The IACHR must undertake a *prima facie* evaluation to examine whether the facts alleged in the complaint lay a foundation for the apparent or potential violation of a right guaranteed by the Convention, and not to establish the existence of a violation. This examination is a summary analysis that does not imply pre-judging the merits in any way. The Commission's Rules of Procedure, on establishing two clear stages, admissibility and merits, reflects this distinction between the evaluation that must be undertaken by the Commission for the purpose of declaring a petition admissible, and for establishing a violation.[8]

55. With respect to this petition, the Commission considers that the arguments submitted by the State require an analysis on the merits, in order to reach a resolution. The IACHR does not find, accordingly, that the petition is "manifestly groundless" or "obviously out of order." Furthermore, the IACHR considers that, *prima facie*, the petitioners have complied with the rules set forth at Article 47(b) and (c).

V. CONCLUSIONS

56. The Commission concludes that it is competent to take cognizance of the complaint submitted by the petitioners, and that the petition is admissible in keeping with Articles 46 and 47 of the Convention.

57. Based on the foregoing arguments of fact and law, and without pre-judging on the merits,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To declare admissible the complaint lodged by the petitioners alleging violations of Articles 2, 8(1), 21, 25, and 1(1) of the American Convention to the detriment of the Sawhoyamaxa Indigenous Community of the Enxet People and its members.
2. To notify the Paraguayan State and the petitioners of this decision.
3. To continue analyzing the merits of the case.
4. To publish this decision and include it in its Annual Report to the OAS General Assembly.

Done and signed at the headquarters of the Inter-American Commission on Human Rights, February 20, 2003. (Signed): Juan Méndez, President; Marta Altolaguirre, First Vice-President; José Zalaquett, Second Vice-President; Commissioners: Robert K. Goldman, Clare K. Roberts, Julio Prado Vallejo, and Susana Villarán.

[1] Article 63. On ethnic identity. The right of the indigenous peoples to preserve and develop their ethnic identity in the respective habitat is recognized and guaranteed. They also have the right to apply freely their systems of political, social, economic, cultural, and religious organization, as well as the voluntary subjection to their customary rules of internal community life so long as these do not violate the fundamental rights established in this Constitution. Indigenous customary law shall be taken into account in jurisdictional conflicts.

Article 64. On community property. The indigenous peoples have the right to community property rights in the land, in sufficient extent and quality to preserve and develop their particular ways of life. The State shall provide them these lands freely; they shall be unattachable, indivisible, imprescribable, not susceptible to be used to secure contractual obligations, nor to be leased; in addition, they shall be tax-exempt.

[2] Resolution P.C. Nº 138/97 Article 1, of the Paraguayan Institute on Indigenous Affairs, May 7, 1997.

[3] Presidential Decree Nº 3789 of June 23, 1999, which declared the Sawhoyamaxa Community to be in a state of emergency indicated that the community was claiming 15,000 hectares of its ancestral territory.

[4] Article 1 of Law 43/89 provides: "No innovation of fact or law shall be admitted to the detriment of the settlements of indigenous communities during the processing of administrative and judicial cases that arise from the definitive titling of the lands."

[5] President Decree Nº 3789 states that the community is made up of 63 families.

[6] On occasion of the on-site visit to Paraguay in 1999, the "IACHR visited Pozo Colorado district in Presidente Hayes department (El Chaco) in order to speak with the Yakye Axa and Sawhoyamaxa indigenous communities of the Enxet people. The Commission was able to see the deplorable situation of these peoples, who live alongside the national highway, without services of any kind, waiting for the authorities to allocate them the land they need. The Commission appreciates the importance of Presidential Decree No. 3789 of June 23, 1999, which declared these indigenous communities to be in a "state of emergency" on account of the extreme conditions they face. In spite of this, the Commission was told that the effective measures ordered by the executive decree for the immediate provision of medical and nutritional assistance to the families that make up that community have not yet been adopted. Similarly, the Commission will closely follow the results of the efforts that have begun to provide the indigenous communities with the land they need." Press Release 23/99 of the IACHR.

[7] The petitioners submitted a census of the Sawhoyamaya community from 1997.

[8] IACHR, Report Nº 45/02, Admissibility, Petition 12.219, *Cristián Daniel Salí Vera et al.* (Chile), October 9, 2002, para. 32.