



INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

Organization of American States

REPORT N° 90/99

CASE 11.713

Enxet-Lamenxay and Kayleyphapopyet (Riachito)
Indigenous Communities
PARAGUAY

I. SUMMARY

1. This case deals with land claims made by the Lamenxay and Riachito (Kayleyphapopyet) indigenous communities, both of which belong to the Enxet-Sanapaná people; it was brought before the Inter-American Commission on Human Rights (hereinafter "the Commission" or "the IACHR") by the indigenous organization *Tierra Viva* with assistance from the Center for Justice and International Law (CEJIL). On March 25, 1998, a friendly settlement agreement that had been promoted by the Commission was signed in connection with this case; under this agreement, the Paraguayan State agreed to acquire a 21,884.44-hectare tract of land in Pozo Colorado district, Presidente Hayes department, in the Paraguayan Chaco, hand it over to the aforesaid indigenous communities, and register it with the competent authorities as belonging to them. In this friendly settlement report, the IACHR offers an overview of the petitioners' allegations and the friendly settlement agreement, and it states its intent to follow up on a number of the State's obligations that are as yet unfulfilled.

II. PROCESSING BY THE COMMISSION

2. On December 12, 1996, the Commission received the complaint, and, on January 8, 1997, it opened the case, transmitted the relevant parts of the complaint to the Paraguayan State, and asked it to submit information within the following 90 days. On May 8, 1997, the Commission made itself available to the parties in an attempt to reach a friendly settlement in this case. On June 23, 1997, Paraguay submitted its response to the complaint. On July 3, 1997, a friendly settlement hearing was held in Paraguay. On March 25, 1998, a friendly settlement agreement was signed in Washington and, subsequently, several meetings between the Commission, the State, and the petitioners were held in order to follow up on the commitments acquired under the friendly settlement agreement. On July 30, 1999, at an event in Asunción attended by the IACHR, Dr. Luis Ángel González Macchi, President of the Republic of Paraguay, presented the representatives of the indigenous communities with documents testifying to Paraguay's compliance with the commitments contained in the friendly settlement agreement.

III. THE PETITIONERS' ALLEGATIONS

3. The petitioners stated that the Enxet are an indigenous people who inhabit the Paraguayan Chaco, with a total population of some 16,000. Around 6,000 Enxet Indians lived in the Anglican Zone of the Paraguayan Chaco, they said, and before their lands were invaded, their main sustenance came from hunting, fishing, and gathering, although they had also cultivated small patches of land and bred some domestic animals.

4. They stated that in 1885, the Paraguayan government began selling all the land in the Chaco to foreigners and, by 1950, the entire territory of the Enxet had been occupied by its new owners. They also noted that the Enxet have been making claims for their traditional lands for many years, have filed several requests for land with Paraguay's Rural Welfare Institute (Instituto de Bienestar Rural – IBR) , and have taken legal action to ensure no modifications be made to the lands they claim in accordance with their constitutional and legal rights.

5. They explained how, in 1991, indigenous representatives from the Enxet communities of Santa Juanita, Riachito, Laguna Pato, and Los Lapachos—located in Pozo Colorado district, Presidente Hayes department, in the Paraguayan Chaco—began administrative proceedings before the Rural Welfare Institute (Instituto de Bienestar Rural – IBR) in order to regain ownership of their traditional lands in the Chaco. Greater emphasis was placed on these efforts after 1992, when the Paraguayan Constitution recognized the rights of indigenous peoples and communities to own land.

6. On December 9, 1993, in order to guarantee the administrative proceedings for the recovery of their ancestral lands brought before the Rural Welfare Institute (Instituto de Bienestar Rural – IBR), the communities' legal representatives sought a court injunction preventing all modifications to the land they claimed; this injunction was granted in February 1994.

7. They claimed that the occupants of the land failed to obey this legal injunction, and so the applicable criminal suits were filed. They explained that this failure to abide by the court's decision undermined the possibility of land ownership by the Enxet indigenous communities of Santa Juanita, Riachito, Laguna Pato, and Los Lapachos, and that two years after the injunction was issued, the case was still at the preliminary stage.

8. They said that even were the criminal proceedings for contempt to end and criminal responsibilities be established in this case, the Paraguayan State should conclude the administrative proceedings begun in 1991 for the definitive granting of land to the aforesaid indigenous communities and it should guarantee the effectiveness of those proceedings by enforcing the nonmodification provisions imposed by the civil court in 1994 as the only way to guarantee the Enxet's right to land ownership.

9. This series of events, they argued, constitutes a violation by the Paraguayan State of the rights to a fair trial, judicial protection, property, residence, and the benefits of culture, as set forth in Articles 8, 25, 21, and 22 of the American Convention on Human Rights and Article XIII of the American Declaration of the Rights and Duties of Man, in breach of the generic duty set forth in Article 1(1) of the American Convention requiring that the rights enshrined therein be respected and ensured.

IV. TERMS OF THE FRIENDLY SETTLEMENT

10. On July 3, 1997, at the initiative of the Commission, which had offered to help arrange such a meeting, a friendly settlement hearing took place in Asunción. It was attended by the IACHR,¹ authorities of the Paraguayan State, nongovernmental organizations representing the indigenous communities involved, and indigenous leaders. At the meeting it was agreed that Paraguay would purchase the lands referred to in the complaint and hand them over to the Enxet-Lamenxay and Kayleyphapopyet-Riachito indigenous communities.

11. In November 1997, an additional hearing was held before the Commission. On that occasion, Paraguay reported it had paid half the cost of the land; the State and the petitioners then jointly agreed on a series of measures intended to ensure that the land was handed over

to the ownership of the indigenous communities in question. In March 1998, the Government paid the previous owners of the land the amount of the purchase price that was still outstanding.

12. On March 25, 1998, a meeting was held at Commission headquarters in Washington, D.C., attended by representatives of the State, the petitioners, and the Commission itself. On that occasion, a friendly settlement agreement based on respect for the human rights enshrined in the American Convention was signed; under this agreement, Paraguay recognized the existence of the indigenous communities' right to the land, at both the domestic and international levels, and the two sides agreed on a series of measures.²

13. Paraguay stated it had fully paid the previous owners the amount of PYG 4,705,154.966 for its purchase of the 21,884.44-hectare tract of land located in Pozo Colorado district, Presidente Hayes Department, in the Paraguayan Chaco, approximately 311 km from Asunción, on the Pozo Colorado to Sta. Juanita highway, on July 23, 1997, by means of Purchase Resolution No. 37/97; additionally, it agreed to transfer it, free of all liens and with all title deeds in due order, to the Enxet-Lamenxay and Kayleyphapopyet (Riachito) communities, both of which belong to the Enxet-Sanapaná people.

14. The State agreed to hand over the land to these communities with minimal delay so they could occupy, use, and enjoy it while the deeds of ownership were being drawn up; it was also agreed that an inventory of all property, accessories, electrical and mechanical installations, etc. in place on the land would be prepared.

15. In addition, the Paraguayan State agreed to provide the communities with the necessary assistance: foodstuffs, medicines, tools, and transportation to move the different families and their belongings from their current residences to their new homes. The State also guaranteed the indigenous communities that the people then working the purchased land would be removed, together with their belongings and those of the former landowners.

16. Similarly, Paraguay guaranteed that the Enxet-Lamenxay and Kayleyphapopyet (Riachito) communities would be given sanitary, medical, and educational assistance in their new settlements, and that the access roads leading to their property would be kept in good repair.

17. Both parties agreed that should there be a dispute in the interpretation of any of the Agreement's obligations, they would consult with the Commission for it to interpret the scope of the obligations and rights it contains; they also agreed to publicize the Agreement widely.

18. The petitioners, in turn, stated that all of their claims in connection with the incidents that gave rise to the case had been satisfied, and they noted that the Commission's mediation had played a decisive role in reaching a friendly settlement in this case.

19. The Commission expressed its thorough satisfaction with the friendly settlement reached in this case and it extended to both parties, the State of Paraguay and the petitioners, its congratulations on the efforts they made in working with the Commission toward resolving the situation described in the complaint.

20. After the signing of the friendly settlement agreement, several meetings between the Commission, the State, and the petitioners were held, in both Asunción and Washington, D.C., in order to follow up on the commitments assumed in the friendly settlement.

21. In July 1999, when the Commission conducted an on-site visit to Paraguay, title over the land had not yet been transferred to the indigenous communities. On July 30, 1999, during the on-site visit, the Commission met with Dr. Luis Angel González Macchi, President of the

Paraguayan Republic, and was informed that on July 27, 1999, Paraguay issued title deeds for the land in the names of the aforesaid communities, thus complying with all the immediate commitments that it had assumed. On that occasion, in the presence of the IACHR, President González Macchi presented the title deeds to the indigenous communities.

V. CONCLUSIONS

22. The Commission reiterates its appreciation of the Paraguayan State's willingness to settle this case by means of reparations, including the measures needed to reclaim the land and hand it over to the Lamexay and Kayleyphapopyet (Riachito) indigenous communities and to provide them with the requisite social assistance. The IACHR also repeats its appreciation of the petitioners and of those individuals who were affected by accepting the provisions of the friendly settlement agreement.

23. The IACHR will continue to monitor the ongoing commitments assumed by Paraguay dealing with the sanitary, medical, and educational assistance to be given to the Enxet-Lamexay and Kayleyphapopyet (Riachito) communities in their new settlements and with the upkeep of the access roads leading to their property. To this end, the Commission asks the State and the petitioners to submit quarterly reports on compliance with those commitments, beginning on January 1, 2000.

24. The IACHR stresses that the friendly settlement mechanism provided for in the American Convention allows individual cases to be concluded on a non contentious basis and, in past cases that have involved several countries, it has proven to be an important vehicle for resolving alleged violations that can be used by both parties (petitioners and states).

25. The Commission agrees to transmit this report to the interested parties, to publish it, and to include it in its Annual Report to the OAS General Assembly.

1 The IACHR was represented by its Rapporteur for Paraguay, Dean Claudio Grossman.

2 After the agreement was signed, the IACHR issued a press release expressing "its recognition to the Government of Paraguay for its willingness in resolving this case by means of reparations, including resolving the land claims and the transference of the land to the indigenous communities Lamexay and Kayleyphapopyet -Riachito- and the assistance necessary for helping these communities establish themselves in these territories. The Commission also expresses its recognition to the petitioners and those affected by the acceptance of the terms of the agreement in reference." IACHR, Press Release No. 4/98.