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REPORT No. 256/20
PETITION 747-05
FRIENDLY SETTLEMENT

THE INDIGENOUS Y'AKÂ MARANGATÚ COMMUNITY FROM
THE MBYA PEOPLE
PARAGUAY

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PARAGUAY
SEPTEMBER 28, 2020

I. SUMMARY AND RELEVANT PROCEDURAL ASPECTS OF THE FRIENDLY SETTLEMENT PROCESS

1. On June 29, 2005, the Inter-American Commission on Human Rights (hereinafter "The Commission" or "IACHR") received a petition presented by Mirta Pereira Giménez on behalf of the Y'akâ Marangatú Indigenous Community of the Mbya People (in the hereinafter "the petitioners"), in which the international responsibility of the Republic of Paraguay (hereinafter "State" or "Paraguayan State" or "Paraguay"), for the alleged violation of the rights of the Y'akâ Marangatú Indigenous Community of the Mbya People to their ancestral property. The petitioners indicated that the Indigenous Community is settled in San Lorenzo in the Department of Itapúa, and that it would be made up of 14 houses with 67 people under the leadership of Chief Silvio Ramírez. They also indicated that the community's habitat is farm No. 3238 of the Captain Meza District, farm No. 5318 of the Jesús and Trinidad District and Farm No. 518 of the Carlos A. López District registered in the public records under the names of Honrad Wiegand and Franz Albers, and that the community, in 1995, would have established the resources for the legalization of part of said farms (500 hectares) before the Institute of Rural Well-being (IRW) arguing that, until the moment of presentation of the petition, said legalization would not have been achieved.

2. The petitioners alleged that the community had been permanently harassed by the police and judicial authorities with threats of eventual eviction. They also indicated that on April 8, 1997, the community's lawyer reiterated the request for delimitation of the claimed lands. It should be noted that the petitioning party requested the expropriation and delimitation of a smaller area than the one requested at first; therefore, it was decided, by resolution, to request the National Congress, through the Executive Power, the expropriation of the respective property claimed by the Indigenous Community. In the same vein, the petitioners alleged that a bill was drafted to materialize the expropriation, but that the Commission for Agrarian Reform and Rural Welfare of Congress decided to advise the rejection of said bill by Resolution No. 374 of the Chamber of Senators.

3. The parties signed a friendly settlement agreement on March 2, 2009, by means of which the Paraguayan State recognized its international responsibility for the human rights violations committed to the detriment of the Y'akâ Marangatú Indigenous Community of the Mbya People.

4. On May 29, 2020, the petitioner, in light of the Resolution No. 3/20 on Differentiated actions to address the procedural backlog in friendly settlement agreement procedures, indicated that after consulting with the community leader and in response to the progress that have occurred in the case, they would like to remain six more months in the negotiation phase in order to wait for the end of the sanction process of the expropriation project of the 219 hectares in favor of the community, after which they would be in accordance with the approval of the ASA. Subsequently, on September 11, 2020, the petitioning party asked the Commission, in the framework of the implementation of Resolution 3/20, the approval and publication of the friendly settlement agreement achieved in this case.

5. In this friendly settlement report, as established in Article 49 of the Convention and in Article 40.5 of the Commission's Rules of Procedure, a review of the facts alleged by the petitioner is made and the friendly settlement agreement, signed on March 2, 2009, by the petitioners and the Paraguayan State, is transcribed. Likewise, the agreement signed between the parties is approved and the publication of this report in the Annual Report of the IACHR to the General Assembly of the Organization of American States is agreed.

II. THE ALLEGED FACTS

6. As alleged by the petitioners, the Y'akâ Marangatú Indigenous Community of the Mbya people formally initiated on June 6, 1995, through IBR file [now INDERT in Spanish] No. 3403/95, the administrative procedures aimed at the recovery of a specific area of land that the Mbya Guaraní People consider part of their ancestral territory and traditional habitat, currently affected by individualized properties such as farm No. 3238 of the District of Captain Meza, farm No. 5318 of the District of Jesús and Trinidad and Farm No. 518 of the Carlos A. López District, registered with the General Directorate of Public Registries in the name of Messrs. Konrad Wiegand and Franz Josef Albers, respectively.

7. According to the petitioners, on March 12, 1996, the Civil and Commercial Court of First Instance of the first shift would have provided for the prohibition of innovation in fact and law with respect to farm No. 3238 of the District of Captain Meza, farm No. 5318 of the Jesus and Trinity District and the Farm No. 518 of the District of Carlos A. López; this provision was reportedly notified to Mr. Konrad Wiegand and Mr. Franz Josef.

8. The petitioners noted that, on 10 June 1996, by Decree No. 13644/96, the Executive Branch would have issued the recognition of the juridical personality of the Indigenous Community Y'akâ Marangatú of the Mbya people, established in the place called San Lorenzo Km. 14 of the district of Carlos Antonio López, Department of Itapúa and through which its operation as a legal entity, capable of acquiring rights and contracting obligations, would have been authorized.

9. As reported by the petitioners, once the rigorous procedures have been carried out under IBR File No. 3403/95, INDI [*Instituto Paraguayo del Indígena in Spanish*] would have resolved, by Council Resolution No. 31/99 dated 5 September 1999, to request and manage through the relevant channels the expropriation of the properties claimed by the Community, referring said request to the Ministry of Education and Culture [*MEC in Spanish*], by note P.C. No. 684/00 of 9 October 2000, so that the Executive Branch will make the request for expropriation to the National Congress. By message No. 386 dated December 19, 2000, the Executive Branch would finally have submitted to the National Congress the Bill for the expropriation of the two properties claimed by the Indigenous Community Y'akâ Marangatú.

10. Nevertheless, the petitioners alleged that, through Resolution No. 374/04 dated December 14, 2004, the Senators' Chamber would have resolved to push the Project of Law back and later, through Resolution P. No. 1295/05 dated September 1, 2005, the INDI would have resolved to ratify in all its terms the expropriation request.

11. According to the petitioners, by check-in note No. 2483/05 dated 7 November 2005, Mr. Konrad Wiegand's representative would have submitted to INDI a proposal for a donation of an area of 150 hectares of farm No. 3238 in favor of the Indigenous Community Y'akâ Marangatú, as a form of peaceful and definitive settlement of the conflict as regards the estate registered in its name. This proposal was accepted on 16 November 2005, and the transfer of the 150 hectares was materialized by public deed signed on July 12, 2006, waiving the community to the remaining extension of the aforementioned farm, but stating that its claim on the estate No. 518 of Carlos Antonio López remained firm, thus pending the qualification of 219 hectares corresponding to the aforementioned farm in favor of the community.

12. As a result, in receiving no favorable response to its territorial claims, the Indigenous Community Y'akâ Marangatú of the Mbya Guaraní people filed a complaint before the IACHR against the Paraguayan State on 29 June 2005, alleging the violation of human rights referred to in Articles 21 (right to property) and 25 (judicial protection) in relation to Articles 1.1 (obligation to respect) of the American Convention on Human Rights, (hereinafter "Convention" "American Convention"), to the detriment of the Indigenous Community of the Mbya people.

III. FRIENDLY SETTLEMENT

13. On 2 March 2009, the parties signed a friendly settlement agreement. The text of the friendly settlement agreement submitted to the IACHR is as follows:

**FRIENDLY SETTLEMENT AGREEMENT PETITION P-747-05
The Indigenous Y'akâ Marangatú Community from the Mbya People**

In the city of Asunción, capital of the Republic of Paraguay, at 2 days of March of the year two thousand nine, they meet; the leaders of the Indigenous Community Y'akâ Marangatú, Mr. Silvio Ramírez; on behalf of the Petitioners; lawyer Mirta Pereira, members of the Organization Pro Indigenous Communities (hereinafter...) (*Sic*); and, on behalf of the Paraguayan State (hereinafter the State), the Minister of Education and Culture, in charge of the Presidency of the Paraguayan Indigenous Institute, hereinafter "INDI", Mr. Horacio Galeano Perrone as well as the Attorney General of the Republic, José Enrique García A., to subscribe to this commitment, to attend Petition 747-05 "Indigenous Community Y'akâ Marangatú", pending before the Inter-American Commission on Human Rights, and sign this friendly settlement agreement on the basis of respect for the rights enshrined in the American Convention on Human Rights and other international instruments, which, once fully complied with, will request the Honorable Inter-American Commission on Human Rights to submit Petition, under the following clauses:

FIRST: The State promises to give fulfillment to the established in the Judgment No. 1350 of December 22, 2005, which grants the *Writ of Amparo*, filed by the INDI in favor of the Community, and it also undertakes to comply with the precautionary measure of not Innovating, currently in the Farm 581.

SECOND: The State undertakes to provide the mechanisms for the Court of Peace in the Carlos A. López area to take effective knowledge of these Resolutions, and to carry out the appropriate actions for their full compliance. In addition, the Paraguayan State will take appropriate measures to ensure that the National Police established at the site can comply with the aforementioned Judicial Resolutions.

THIRD: LITERAL A) The State, through the Secretariat of the Environment [*SEAM in Spanish*], undertakes to initiate an audit, in order to check whether or not pollution exists in the area concerned and, if so, to determine the cause of said pollution. **LITERAL B)** The State is committed to conducting an environmental impact assessment study to drive this task.¹

FOURTH: The State undertakes to follow up on the formal complaint filed with the Environmental Unit of the Public Prosecutor's Office, for alleged situations that constitute the commission of ecological crimes in the designated territorial area.

FIFTH: The State undertakes to request from the relevant bodies a program of support for the agricultural subsistence of the Community. The Paraguayan Indigenous Institute (INDI) and the Ministry of Agriculture and Livestock [*MAG in Spanish*] will participate in this program.

SIXTH: The State, through the Ministry of National Emergency [*SEN in Spanish*] or the Secretariat of Social Action [*SAS in Spanish*], undertakes to provide basic food to the Community on a monthly basis, as well as the provision of drinking water through the Itapúa Governorate, until the Community can supply itself.

SEVENTH: The Paraguayan State undertakes to take the necessary measures to investigate the alleged damage caused to the Community and that was reported by its legal

¹ Numbering of the clauses outside the original text of the agreement.

representatives, so that, if the existence of such damage is verified, the person(s) responsible for the alleged event can be individualized, so that the relevant actions could be promoted for the eventual compensation to the Indigenous Community, by those responsible.

EIGHT: The State undertakes to provide regular medical assistance to the Indigenous Community, as well as to provide it with the necessary inputs for this purpose.

NINTH: The State undertakes, to initiate the efforts before the Ministry of Education and Culture (MEC) in order to build and enable a school, as well as the provision of teachers, teaching materials and basic furniture for it, by the beginning of 2009.

TENTH: The State undertakes to carry out the relevant procedures for the purpose of direct purchase or expropriation of the 219 hectares claimed by the Indigenous Community Y'akâ Marangatú for which it undertakes to present the Expropriation Project before the end of this year. It also undertakes to complete the expropriation process within one year of the submission of the Project.

ELEVENTH: The State undertakes to keep the parties informed every 4 months on the progress in the implementation of this Agreement.

IV. COMPATIBILITY AND COMPLIANCE DETERMINATION

14. The IACHR reiterates that in accordance with articles 48.1.f and 49 of the American Convention, this procedure aims to "reach a friendly settlement to the matter based on respect for human rights recognized in the Convention". The acceptance of carrying out this procedure expresses the good faith of the State in order to fulfil the purposes and objectives of the Convention under the *pacta sunt servanda* principle, by which States must fulfil in good faith the obligations assumed in the Treaties.² It also reiterates that the friendly settlement process provided for in the Convention allows for the disposition of individual cases in a non-adversarial manner and it has proven to be an important vehicle for reaching solutions at the initiative of both parties and has been used in cases involving a number of different countries.

15. The Inter-American Commission on Human Rights has closely followed the development of the friendly settlement achieved in the present case and highly values the efforts made by both parties during the negotiation of the agreement to achieve this friendly settlement that is consistent with the object and purpose of the Convention.

16. In the light of IACHR Resolution 3/20 on differentiated actions to address procedural backlog on friendly settlement procedures, since the signing of the agreement, the parties shall have two years to move towards their approval by the Inter-American Commission on Human Rights, except for exceptions duly qualified by the Commission. In relation to matters with agreements concluded and without approval in which this timeframe has expired, the Commission shall determine its course of action taking into account in particular the duration of the implementation phase, the antiquity of the petition and the existence of fluid dialogues between the parties and/or substantial progress in the implementation phase. In said Resolution, the Commission established that when evaluating the viability of the approval of the agreement, or the closure or maintenance of the negotiation process, the IACHR will consider the following elements: a) the content of the text of the agreement and whether it has a clause of full compliance prior to its approval; b) the nature of the agreed measures; c) the degree of compliance thereof, and in particular the substantial execution of the commitments assumed; d) the will of the parties in the agreement or in a subsequent written communication; e) its suitability with human rights standards and f) the observance of the State's will to fulfill the commitments assumed in the friendly settlement agreement, among other elements³.

² Vienna Convention on the Law of Treaties, U.N. Doc A / CONF.39 / 27 (1969), Article 26: "Pacta sunt servanda". Any treaty in force is binding on the parties and must be performed by them in good faith.

³ In this regard, see, IACHR, Resolution 3/20 on differentiated actions to address the procedural delay in friendly settlement procedures, approved on April 21, 2020.

17. In view of the eleven years since the signing of the friendly settlement agreement, that this is a petition filed 15 years ago, on 29 June 2005, and because the requesting party has asked for the homologation, it corresponds to determine the course of action in the present case and to assess the viability of the homologation in light of the objective criteria established by the Commission in Resolution 3/20.

18. With regard to the nature of the measures, it should be noted that most of the measures included in the friendly settlement agreement are of successive tract and therefore require continuous and sustained monitoring over time until their full implementation. In this regard, the monitoring of these measures, within the framework of a friendly settlement, could be done publicly and after the issuance of the approval report, specifically within the follow-up stage that follows from the publication of that report.⁴

19. With regard to the degree of compliance with the agreement, the Commission then moves to assess the progress made in relation to each of the clauses of the agreement.

20. With regard to the first clause, on compliance with Judgment No. 1350 of the 22nd of December of 2005, which grants protection for the community and compliance with the precautionary non-innovation measure of the estate No. 581, on 25 June 2010, the State indicated that the Paraguayan Indigenous Institute (INDI) would have submitted the request for the precautionary measure that was granted, with the corresponding Prohibition of Innovating on the Ground and the corresponding judicial offices were issued to the local Commissioner, notifying the counterparty's representative, Dr. Oscar Patrocinio Benítez, on 12 August 2009.

21. On 30 March 2017, petitioners reported that on 22 December 2005, the *Writ of Amparo* was granted and the cessation of harassment, prohibitions and restrictions imposed on the community within their traditional habitat would have been ordered. They also indicated that the State had taken concrete action to comply with the protection decision and that, following the lifting of the precautionary measure, INDI would not have acted quickly enough to create precautionary measures to protect the rights of the community that continue to be infringed by Franz Josef Albers.

22. Subsequently, on 1 January 2019, the petitioners expressed the lack of compliance with the precautionary measures in force within the ancestral lands of the community and the lack of responses by the State to requests for information made by the petitioners. In the same way, on 24 April 2019, the petitioners indicated that they sent a note to INDI, expressing concern about the failure to comply with the precautionary measures that are in force on the ancestral lands of the indigenous community, by the representatives of the holders of the title of property, without an effective response to that request. They also indicated that the submission of the precautionary measures was promoted to the Court by INDI itself. Finally, it requested the Paraguayan State to provide information on the full validity of the precautionary measures granted by the Civil Court of the Tenth Shift of the Capital and the communications sent to the community on the validity of the same.

23. At the working meeting of 15 October 2019 facilitated by the Commission, the petitioners requested, to establish a roadmap to repair the community as required, which would cover the issues of compliance with the precautionary measures verified by the Public Prosecutor's Office. For its part, the State agreed, with the route proposed by the petitioners, but did not commit to the specific date of delivery of the action plan.

24. On 2 June 2020, the petitioners indicated that they sent a written communication to the President of the Paraguayan Institute of Indigenous (INDI) and to the Human Rights Directorate of the Ministry of Foreign Affairs, expressing the serious violation on land claimed by the community by a third party claiming to be tenant of the holder of the title Josef Albers; the petitioners indicated that Mr. Cubas would have carried out activities of dismantling the forest and preparing for intensive crops within the area claimed by the Community by jeopardizing all the sowing of the Y'ak-Marangatú members for their livelihood, as well as

⁴ In this regard, see also, IACHR, Report No. 3/20, Case 12.095. Friendly Settlement. Mariela Barreto Riofano. Peru. February 24, 2020.

jeopardizing their Yerba Mate plantings. For their part, the members of the Community informed Mr. Cubas that there are legal measures that protect them and that they were brought by INDI in favor of the community, under file No. 372 of 2017, issued by the Court of First Instance in Civil and Commercial matters, which years ago would have already been notified to Mr. Albers. In this regard, the petitioners indicated that they had not received a response from the State on both administrative and judicial legal actions to precaution the livelihoods and traditional land of the Indigenous Community Y'ak-Marangatú.

25. In the light of the information submitted by the parties and taking into account that INDI has instituted the request for precautionary measure, which were granted and the corresponding notifications were made, and taking into consideration the recent approval of the expropriation law, indicated in paragraph 47 this report, the Commission considers that this part of the agreement is partially complied with and so it declares so. The Commission awaits information from the State on the measures taken to prevent interference by third parties in the ancestral lands of the community and to ensure the implementation of the precautionary measures related to this end of the agreement.

26. With regard to the second clause, on the State's commitment to provide mechanisms for the area's Justice of the Peace Judge to become effectively aware of decisions relating to the protection of the territory and to take appropriate actions to comply with them and to take appropriate measures to ensure that the National Police established at the site enforces the Judicial Resolutions, on June 25, 2010, the State indicated that the Civil, Commercial and Labor Court of the childhood and Adolescence of Iruña, that had knowledge of the trial "Franz Josef Albers and others, resolved through the third number of the SD No. 11 of December 22, 2008, to officiate said Resolution to the command of the National Police, the Departmental Police and the Commission of the district of Carlos Antonio López. Likewise, it was decided that Commissary No. 92 of San Lorenzo, Alto Paraná, was in charge of giving compliance to the judicial measure of prohibition of not innovating on the finance No. 581.

27. On 30 March 2017, the petitioners reported that in all the courts where trials had been brought in which the community was a shareholding party, they officiated the Court of Peace, informing it of the measures taken in decisions based in the higher courts and giving it sufficient commission for the realization of the legal acts typical of these judicial proceedings. Taking into account the information provided by the parties, the Commission considers that clause II of the agreement is fully complied with and declares so.

28. With regard to literal A of the third clause on the audit commitment to check for pollution in the area and to determine the cause of pollution, on 30 March 2017, petitioners reported that on October 28, 2009, SEAM technicians would have carried out a review in the territory of the community, and on that occasion it would have been found that the crops were contaminated by the use of total herbicide with glyphosate principle by the owner of an adjoining farm. Taking into account, the information provided by the parties, the Commission considers that this part of the agreement is fully complied with and so it declares so.

29. With regard to literal B of the third clause, on the commitment to carry out an environmental impact assessment for that task, the petitioners indicated that the environmental impact assessment in the area would not have been carried out. Therefore, taking into account the information provided, the Commission considers that this part of the agreement is still pending for compliance and so it declares so. For that reason, the Commission considers that the third clause of the agreement is partially complied with and so it declares so. The Commission would be awaiting up-to-date information from the State that will account for progress in carrying out the environmental impact assessment.

30. With regard to the fourth clause, on the commitment to follow up on the complaint filed with the Environmental Unit of the Public Prosecutor's Office, for the alleged situations that constitute ecological crimes in the designated territorial area and the seventh clause, on the duty to take the necessary measures aimed at investigating the alleged damage caused to the community and that were reported by their legal representatives, so that, if the existence of such damages is proven, those responsible can be identified and the pertinent actions taken to an eventual redress, on February 10, 2007, the community representative filed a complaint for ecological offences against Franz Josef Albers and his employees. The complaint indicated facts

related to fumigation, coercion and threats. In this regard, the petitioners indicated that the Public Prosecutor's Office would not have pursued said investigations.

31. On 25 June 2010, the State indicated that on 20 February 2008, the Public Prosecutor's Office communicated the initiation of the tax investigation to the competent court by the alleged commission of acts punishable against the environment, concluding that in this way the investigation proceedings were initiated to corroborate the existence of the punishable act denounced.

32. On 30 March 2017, the petitioning party indicated that on 29 April 2008, INDI lodged a complaint on acts of serious coercion and others, against the conventional representative of Mr. Franz Josef. He also indicated that the community leader would have filed with Unit No. 1 of the Zonal Prosecutor's Office of Mayor Otaño the following complaints: i) on April 7 of 2010, on the facts that could be set up as coercion by the conventional representative of Mr. Franz Josef, of a SENAVE civil servant named Walter Lezcano; (ii) on September 3 of 2010, on events that could be set up as coercion by conventional representative Franz Josef and his foreman; (iii) on October 26, 2011, on crop spraying work consummated by staff of the owner of the claimed property, who at the time had a precautionary measure not to innovate in fact and in law. Finally, the petitioners concluded that the Public Prosecutor's Office did not prompt investigations into said complaints by the public prosecutor's community. Based on the information provided by the parties, the Commission considers that the fourth and seventh clauses of the agreement are still pending for compliance and so it declares so, and urges the Paraguayan State to promote investigations and report on such activities as soon as possible in order to assess compliance with the measure.

33. With regard to the fifth clause, on the commitment to request from the relevant bodies a support program for the agricultural subsistence of the community, on 25 June 2010, the State indicated that the Ministry of Agriculture and Livestock through its directorate of Agricultural Extension, Department of Technical Assistance to Indigenous Communities [*ATCI in Spanish*] has carried out the following activities; (i) delivery of 16 self-consumption seed kits; (ii) tools for tillage; (iii) delivery of 2 manual costal sprayers; (iv) technical assistance and training in organic agriculture and beekeeping; (v) delivery of 6 hives for community use; and (vi) delivery of used clothing. The collection of affidavits for 16 community-based families⁵ for the National Register of Family Agriculture (RENAF) was also indicated. Subsequently, on 17 November 2011, the State indicated that the Ministry of environment (SEAM) through his representative indicated that the community members are conducting on-site reforestation.

34. On 30 March 2017, petitioners reported that, in 2013, a community project was implemented through the Ministry of Agriculture, and some activities for the food cultivation for the community subsistence were carried out with products such as beans, maize of different varieties and beans, among others. The petitioners also confirmed the implementation of fish farming and tilapia management activities. Given the plurality of measures reported by the parties, the Commission considers that this part of the agreement is fully complied with and so it declares so.

35. With regard to the sixth clause, on the commitment to provide basic food to the community on a monthly basis, including the provision of drinking water, until the community can supply itself, on June 25, 2010, the State indicated that under the National Indigenous Peoples' Care Program, PRONAPI, five deliveries had been made between May 2009 and February 2010, for a total of 121 food kits, forecasting that each kit with 47-kilogram would feed beneficiaries for one month.

36. On March 30, 2017, petitioners reported that since 2009, the State has provided monthly food for 22 families in the community to date. Subsequently, at the working meeting of 15 October 2019 facilitated by the Commission, the petitioners reported that INDI sent food to the community the previous month and indicated that there were 28 families who still did not have access to such deliveries.

⁵ According to the information in the file, this measure was initially going to benefit 18 families, but two of them disappeared from the scene.

37. Based on the information provided by the parties, the Commission considers that this part of the agreement has reached a partial level of implementation and so it declares so and urges the parties to delimit the timeframe and the scope of the element of self-sustainability described in the agreement in order to continue monitoring this measure and to subsequently assess the full compliance of the measure. The Commission also urges the State to adopt all measures so that all families have access to food and drinking water deliveries according to the commitment established in the agreement.

38. With regard to the eight clause, concerning the commitment to provide regular medical assistance to the community and to provide it with inputs for this purpose, on 25 June 2010, the State indicated that on May 6, 2010, health care would have been provided to the community by staff of the Directorate-General of Assistance for Vulnerable Groups, according to documentation sent by the Ministry of Public Health and Social Welfare. In addition, on November 17, 2011, the State indicated that medical, dental and immunization care was provided in coordination with the health service of the Carlos Antonio López district with regular visits since 2009 to the indigenous community Y'ak-Marangatú. It was further reported that, since February 2011, with the installation of the USF [*Family Health Unit in Spanish*], the medical attentions would have been carried out on a monthly basis, with the quarterly support of mobile units, which also assists 35 other indigenous communities, adding that these indigenous communities frequently migrate from one district to another, making it difficult to maintain a population with exact numbers of inhabitants.

39. On March 30, 2017, the petitioners reported that since 2009, the State provides monthly assistance to the community, which includes analgesics, sanitation, vaccination, wound healing, and other medical services. Due to the foregoing, and given that an instance of regular periodic attention to the community was created, through the mobile units, the Commission considers that the eighth clause of the agreement has achieved a partial substantial level of compliance and so it declares so.

40. Regarding the ninth clause, on the commitment to initiate procedures with the Ministry of Education and Culture in order to build and enable a school, as well as the provision of teachers, teaching materials and basic furniture for it, on June 25 of 2010, the State indicated that the Ministry of Education and Culture, through the General Directorate of Indigenous School Education, had carried out the following actions: i) habilitation of the school by resolution No. 676 dated April 22, 2009, as basic school No. 7581 of the indigenous community - Carlos A. López District - Department of Itapúa; ii) the assignment of a teacher with an L3F category equal to 1,234,800 Guaranies; iii) 15 children who were enrolled in second grade and 5 in first grade, covering all school-age children from 25 families that make up the community; iv) in 2010, the school received the basic basket of school supplies and support materials for teachers and students provided by the Ministry of Education and Culture; and v) the provision of school snacks that is delivered by the local government. Additionally, it was indicated that steps were being taken to make the construction of the school premises effective, prioritized in the list of requests presented in the Infrastructure Directorate of the Ministry of Education and Culture in 2010 and the furniture for students that was under management for its realization in the school year.

41. On November 17, 2011, the State updated the progress in the following terms; i) permanence of a teacher with a L3F category equal to 1,358,280 Guaranies working the afternoon shift; ii) it was confirmed that 23 children were enrolled in school, covering all children of school age from 25 families that make up the community; iii) in 2011, the school received the basic basket of school supplies and support materials for the teacher, such as supplies and study programs, bilingual materials (Guaraní - Spanish); iv) periodic teacher training was being carried out within the framework of the national teacher training campaign, which is financed by the Viva II school program; v) the school was built and is made up of three classrooms with wells and bathrooms; vi) furniture was provided for the students through the MEC; and vii) the school lunch continues to be delivered by the local government.

42. On March 30, 2017, the petitioners reported that the INDI built within the claimed territory (farm No. 581) two classrooms with a surface area of 14x8 m² with wooden walls, a zinc roof, a baked-on floor, equipped with chairs and tables and two latrine type bathrooms, for the operation of the community school. Likewise, they indicated that three teachers were assigned with state lines, who were in charge of the schooling of students in preschool, first cycle (1, 2 and 3 grade) and second cycle (4, 5 and 6 grade). Given the plurality of

actions reported by the parties, the Commission considers that this part of the agreement has been fully complied with and so it declares so.

43. Relative to the tenth clause, on the commitment to carry out the pertinent procedures for the direct purchase or expropriation of the 219 hectares claimed by the community, the parties exchanged information on this end of the agreement without achieving greater progress in the period between November 2011 and October 2019.

44. On October 15, 2019, at a working meeting facilitated by the Commission, the petitioning party requested the issuance of a bill for the expropriation of the hectares, to be carried out as quickly as possible. It added that the INDI had already recognized that the 219 hectares are part of the community's ancestral territory and initiated a *Writ of Amparo* in defense of the community, for which they considered that there would be no doubt on the part of the State of that recognition. At the same time, it indicated that it was necessary to articulate the actions in order to make it effective. Likewise, the petitioners requested that they be informed of the procedures that had to be completed by the community for the INDI to act, adding that they were able to complete the information that was required once the folder of the person responsible for process, and the requirements will be indicated to them in order to establish a roadmap to repair the community, in which the issues of registration and registration of the territory and expropriations were contemplated.

45. On March 19, 2020, the State indicated that, through the Ministry of Foreign Affairs, the Ministry of Education and Sciences (MEC) and the Paraguayan Indigenous Institute (INDI), the work of preparing the Project of Law for the expropriation of the 219 hectares in favor of the community was finished and it had been sent from the Presidency of the Republic to the Legislative Power on February 20, 2020 through message No.362. Likewise, it indicated that, in the Legislative Power, the Project would, in principle, be studied in the Commissions of Indigenous Peoples and that of Departmental, Municipal, District and Regional Affairs, and that once the opinions of these commissions were available, the project It could be submitted to the consideration of the full legislature. Finally, the State informally advanced that the project would be studied at the congress meeting scheduled for May 28, 2020.

46. On July 29, 2020, the Commission published a press release⁶ in which it was observed that on May 28, 2020, the Bill was unanimously approved by the Senate, which “declares of social interest and expropriates in favor of the Paraguayan Indigenous Institute (INDI), for subsequent adjudication to the Y'akâ Marangatú Indigenous Community, Farm No. 581, Area 911, with an area of 219 hectares, 4112 square meters of the Carlos Antonio López District, Department of Itapúa”. The motivation for said project established the need to restore the ancestral lands of the indigenous community, through expropriation, in compliance with the duty to respect the right of the community to their ancestral lands, as well as the duty of the different dependencies and powers of the Paraguayan state, to be articulated for the full compliance of Paraguay's international obligations. Therefore, the Commission urged the Paraguayan State to “advance with the second approval of the bill in the Chamber of Deputies, and its subsequent enactment by the Executive Power, so that the objective and end of the friendly settlement agreement could be materialized”.

47. Subsequently, on September 11, 2020, the petitioners reported that in a joint task with the members of the Executive Power, the Expropriation Bill in favor of the Y'aka Community had been approved by a majority of votes in the Chamber of Deputies, and that the said law had been sanctioned and sent to the Presidency of the Republic for its promulgation.

48. Finally, the Commission acknowledges that on September 18, 2020, the law of expropriation was sanctioned and promulgated by the President of the Republic of Paraguay⁷. In light of the information presented by the parties, the Commission considers that this end of the agreement has reached a partial substantial level of execution and so it declares so, and urges the State to move towards the effective

⁶ IACHR, Press Release No. 181/20. IACHR welcomes the approval of the bill for the expropriation of land in the first instance in the Chamber of Senators within the framework of the friendly settlement process in the case of the Y'akâ Marangatú Indigenous Community of Paraguay.

⁷ See, Official Gazette No. 182 of the Legislative Branch of Paraguay. Pages 43 and 44. Law No. 6615. Official Registry Section, Asunción, September 28, 2020.

expropriation of the land in favor of the community, as established in the friendly settlement agreement, in order to assess full compliance with this measure.

49. Regarding the eleventh clause, it is noted that the State has complied with the commitment to provide information on the progress in the fulfillment of the agreement, and at the same time, it estimates that this commitment shall be maintained until the full implementation of the agreement and/or the cessation of supervision by the Commission. For the aforementioned, the Commission considers that this end of the agreement is partially fulfilled and so it declares so. At the same time, the Commission urges the State to continue to report on the totality of measures that have been maintained under supervision in accordance with the analysis contained in this report.

50. Regarding the suitability of the agreement with the standards on human rights, it is observed that the content of the FSA is consistent with the standards on human rights, since elements such as restitution measures and medical and social rehabilitation were integrated, which are considered appropriate within the factual scenario of the particular case, being in accordance with the various pronouncements of the IACHR and the jurisprudence of the Inter-American Court of Human Rights on the matter of reparation of victims of human rights violations.

51. Finally, in relation to the will of the State to comply with the FSA, it should be noted that, according to the analysis of the case, it is observed that there has been a commitment on the part of the State to comply with the clauses of the friendly settlement agreement.

52. Based on the foregoing, the Commission values the willingness of the parties to advance with the approval of this friendly settlement agreement and considers that the commitments established in the second clause (foresee the mechanisms for the Justice of the Peace of the zone to take effective knowledge of the resolutions related to the protection of the territory and carry out the pertinent actions for their compliance); in literal A of the third clause (inspection of contamination in the area); fifth (support agriculture program for the community subsistence); and in clause ninth (construction and habilitation of a school and provision of teachers, didactic materials and basic furniture) are fully complied with and so it declares so.

53. On the other hand, the Commission considers that the commitments established in clauses first (compliance with the judgment of *Amparo* and precautionary measure); sixth (basic food and drinking water) and eleventh (duty to keep the parties informed) have been partially complied with and so it declares so. Likewise, the Commission considers that clauses eighth (periodic medical assistance to the community and provide it with the inputs for this purpose) and tenth (direct purchase or expropriation of 219 hectares) have reached a partial substantial execution level and so it declares so. Finally, the Commission considers that the commitments established in literal B of the third clause (environmental impact assessment); and in clauses fourth (follow up on ecological crimes); and seventh (investigation for damages), are pending compliance and so it declares so. Therefore, the Commission will continue to supervise these aspects of the agreement until its full implementation. Finally, the Commission considers that the friendly settlement agreement has reached a partial substantial level.

V. CONCLUSION

1. Based on the foregoing considerations and by virtue of the procedure provided for in Articles 48.1.f and 49 of the American Convention, the Commission wishes to reiterate its deep appreciation for the efforts made by the parties and its satisfaction for the achievement of a friendly settlement in the present case, based on respect for human rights, and compatible with the object and purpose of the American Convention.

2. In accordance with the considerations and conclusions set forth in this report,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

DECIDES:

1. To approve the terms of the agreement signed by the parties on March 2, 2009.
2. To declare full compliance with the second clause (foresee the mechanisms for the Justice of the Peace of the area to take effective knowledge of the resolutions related to the protection of the territory and carry out the pertinent actions for its compliance); literal A of the third clause (inspection of contamination in the area); and clauses fifth (support agriculture program for the community subsistence); and ninth (construction and habilitation of a school and provision of teachers, teaching materials and basic furniture), of the friendly settlement agreement, according to the analysis contained in the present report.
3. To declare partial compliance with clauses first (compliance with the Amparo Judgment and precautionary measure); sixth (basic food and drinking water); and eleventh (duty to keep the parties informed), of the friendly settlement agreement, according to the analysis contained in this report.
4. To declare partial substantial compliance with clauses eighth (periodic medical assistance to the community and provide it with supplies for that purpose) and tenth (direct purchase or expropriation of 219 hectares), of the friendly settlement agreement, according to the analysis contained in this report.
5. To declare pending for compliance clauses fourth (follow up on ecological crimes) and seventh (investigation for damages), according to the analysis contained in this report.
6. To continue with the follow-up of the commitments assumed in the first clause (compliance with the judgment of protection and precautionary measure); literal B of the third clause (environmental impact assessment); and clauses fourth (follow up on ecological crimes); sixth (basic food and drinking water); seventh (investigation for damages); eighth (periodic medical assistance to the community and provide it with supplies for that purpose); tenth (direct purchase or expropriation of 219 hectares) and eleventh (duty to keep the parties informed), according to the analysis contained in this report.
7. To declare that the friendly settlement agreement has been partially substantially executed, according to the analysis contained in this report.
8. To make this report public and include it in its Annual Report to the OAS General Assembly.

Approved by the Inter-American Commission on Human Rights on September 28, 2020. (Signed): Joel Hernández García, President; Antonia Urrejola, First Vice-President; Flávia Piovesan, Second Vice-President; Esmeralda E. Arosemena Bernal de Troitiño, Julissa Mantilla Falcón and Stuardo Ralón Orellana, Members of the Commission.