

# The Elusive Promise of Indigenous Land Rights in Paraguay

Achievements, Challenges, and Current Trends

JOEL E. CORREIA, RODRIGO VILLAGRA-CARRON, AND  
MARCOS GLAUSER

## Introduction

News headlines in 2021 revealed a troubling trend in Paraguay: “Indigenous communities are violently dispossessed in pandemic times” (La Nación, 2021); “For the second time in one year they have dispossessed the Indigenous community Cerrito from Arroyo Guazú” (UltimaHora, 2021); and “Paraguay: A violent wave of dispossessions batter Indigenous communities” (Movimiento Regional por la Tierra, 2021). Each headline – and there are many more like them – documented a violent conflict in an increasingly challenging context where long-standing land tenure inequality and socio-economic marginalization stoke a heated debate about the elusive promise of Indigenous land rights in Paraguay.<sup>1</sup> Although the politics of Indigenous land rights have been contentious for decades, the shocking number of violent conflicts in 2021 cast a new light on the fraught and delicate status of these rights. Across the country, and particularly in areas of extensive soybean production, producers of agro-export commodities, often with state support, forcibly removed Indigenous Peoples from lands they claimed, or they threatened those already titled with displacement (Barrios, 2021). Such events are marked by the burning and razing of homes, direct violence or the threat of it, and the criminalization of land claimants.

The current trends illustrate two related processes evaluated in this chapter. A historical analysis of key moments for Indigenous land rights

<sup>1</sup> Here, we are indebted to Engle’s (2010) work on “the elusive promise of Indigenous rights.”

within Paraguay demonstrates what we call “pendulum policies,” where state actions move from *violations* of land rights toward the codification and protection of land and territorial rights (*justice*), and then back to *violations* again. It is worth noting here that Paraguay has a robust Indigenous rights framework that includes constitutional guarantees, regulatory policy and law, and the ratification of major international mechanisms like the International Labor Organization (ILO) Convention 169 and endorsement of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). This brings us to the second trend we evaluate: the implementation gap. Put simply, the “pendulum policy” pattern illustrates not merely state negligence, but a persistent gap between the juridical and discursive guarantee of *de jure* rights and the normalized violation of rights through *de facto* acts that erode Indigenous Peoples’ rights and threaten their wellbeing. We ground these observations in an analysis of the role that international human rights mechanisms have played in supporting domestic struggles for land rights and of the current threats to Indigenous communities that result from acts that undermine territorial integrity, such as direct dispossession and land renting.

This chapter provides a grounding in Paraguay’s historical and current socio-political dynamics. We base our work on literature, an assessment of Inter-American System actions, and consideration of current violent dispossessions. Moreover, we draw from our deep experience and commitment, sharing over forty years of experience working on Indigenous land rights in Paraguay from academic research, direct involvement in strategic litigation before the Inter-American Court, extensive advocacy and activism with Indigenous communities across the country, and the co-production of strategies to support Indigenous autonomy.

### History and Evolution of Indigenous Land Rights

Nineteen different Indigenous Peoples, among five distinct linguistic families, have lived, and continue to live, across Paraguay: the Guaraní (Aché, Avá Guaraní, Mbya, Pai Tavytera, Guaraní Ñandeva, Guaraní Occidental), Maskoy (Toba Maskoy, Enlhet North, Enxet South, Sanapaná, Angaité, Guaná), Mataco Mataguayo (Nivaclé, Maká, Manjui), Zamuco (Ayoreo, Yvytoso, Tomárahó), and Guaicurú (Qom). Historically they practiced different forms of a mobile lifestyle from hunting and gathering to small-scale cultivation practices. The rich cultural diversity of Indigenous Peoples remains present today, but many groups and languages are highly threatened due to extensive

deforestation and pressures from expanding agricultural and ranching frontiers across the country, in both the Atlantic Forest to the east and Chaco Forest to the west. Due to persistent discrimination and racist policies, Indigenous Peoples are the most marginalized social group in the country; however, they maintain their resistance, demanding land rights and political inclusion despite the multitude of contemporary and historical barriers we discuss in this chapter.

Like the swing of a pendulum, the history of Indigenous territorial rights since Paraguay's independence from Spanish colonization is one of advances and setbacks. The relationship of exploitation, territorial alienation and genocide of the "colonial Indian" (Bonfil Batalla, 1972) is the birthmark of the Paraguayan nation-state that continues to the present, which can be understood as a type of habitus, or what Bourdieu (1992) might call "a structuring structure." Despite the dynamic events that created the structure of unequal socio-economic relations in Paraguay, these forces remain stubbornly persistent and stable. Broadly speaking, inequality has long marked two prevailing sectors of society: wealthy Spanish *encomenderos and colonists* on the one hand, and marginalized Indigenous communities on the other, from Guaraní settled on Jesuit missions to those in the Chaco whom colonists long fought. Surprisingly similar social and economic relations continue to be reproduced in Paraguay today and are plain to see in the politics of Indigenous land rights.

Today, large landowners, ranchers, soybean farmers, and transnational agro-commodities companies largely comprise the elite and upper class of Paraguayan society. The inequity is illustrated by the fact that 4.3 percent of existing landowners control 90 percent of the land in Paraguay, or roughly 29,500,000 hectares of land (Güereña & Rojas Villagra, 2016). Meanwhile, the nineteen different Indigenous Peoples across Paraguay have collectively secured 1,143,945 hectares of land (i.e., returned for possession and occupation or in the process of being titled but still in the name of another entity). To be clear, this is the total amount of land currently recognized as under Indigenous possession, which is twenty-five to thirty times less than the total area that corresponds with the ancestral and traditional territories of Paraguay's Indigenous Peoples (Villagra, 2021).

### *Indigenous-State Relations and Land in the Nineteenth Century*

In the nineteenth century, four key events impacted Indigenous territories that have enduring importance on land rights today. First, several

early leaders of Paraguay, following independence from Spain, employed a “pendulum policy” toward Indigenous Peoples, where some protections for land rights were granted but state policy also shifted to violent ends to repress and dispossess Indigenous Peoples. We briefly outline several moments that mark important shifts in state actions toward Indigenous Peoples. First, the peace treaty between the dictator, Rodríguez de Francia (1814–1940), and the Cacique Mbaya Calapa-mi of 1821 recognized Calapa-mi’s territory (Ribeiro, 2009) and nudged the pendulum toward incipient Indigenous land tenure before the state. Although the treaty was not the only one of its kind, Francia spared no effort to combat the Indigenous Peoples in the country’s border region to ensure the country’s territorial integrity, a policy followed by subsequent President Carlos Antonio López (1842–1862) and his son Francisco Solano (1862–1870) (Velázquez, 2003). Second, in 1825 Francia decreed that all lands within Paraguay without existing title would become state property. The decree included the autonomous Indigenous territories technically within the state’s borders, but effectively outside the realm of the state due to little contact or knowledge of Paraguayan laws (Miranda, 1982). Third, President Antonio López issued the decree of 1848 that dissolved the twenty-one Guaraní “Indian villages” previously established by the Spanish colony. The decree made Guaraní “free citizens” of the state’s “communal” regime, yet stripped them of their community lands (Velázquez, 2003). Finally, after the War of the Triple Alliance (1865–1870), Paraguay enacted laws between 1883 and 1885 to sell vast areas of public lands to finance war debts (Pastore, 2008), which resulted in the sale of Indigenous territories without the consent of Indigenous Peoples. Thus, by the end of the nineteenth century, the measures taken by both Francia and López had clearly shifted the pendulum in an oppressive direction, by first stripping Indigenous Peoples of their territories through law, then materially when selling Indigenous lands to finance state debts.

*Emergent Indigenous Land Rights in the Twentieth Century:  
A Land Rights Framework*

Indigenous-state relations changed over the course of the twentieth century from total tutelage to multicultural democracy. The 1904 Colonization Law coupled with the 1909 “Law of the conversion of Indians to Christianity and civilization” established concessions up to 7,500 hectares to create Indigenous reductions (akin to reservations)

entrusted to religious missions, persons, or societies. Though the laws did not differ much from previous state approaches, they ratified state-led Indigenous tutelage, confinement, and Christianization in new ways (Velázquez, 2003). In 1936, Presidential Decree 7389 established a “National Board of Indigenous People” that gave the military powers to oversee Indigenous affairs in addition to Christian churches already charged with doing so. A new national constitution enacted in 1940 omitted Indigenous Peoples and their territorial rights, while the Agrarian Statute of the same year maintained colonial-era communal land for Indigenous communities and set a maximum surface parameter based on the Indigenous demography (Velázquez, 2003). The Statute also defined an agricultural purpose for Indigenous lands like those required of peasant colonies, a bias of interpretation and application of Indigenous territorial rights that survives today.

The Alfredo Stroessner dictatorship (1954–1989) further exemplified the state’s “pendulum policy,” creating a Department of Indigenous Affairs within the Ministry of National Defense in 1958, with the explicit objective of assimilating and settling Indigenous Peoples, and the implicit goal of controlling “internal subversion” and the borders (Horst, 2007). The military role in Indigenous affairs, coupled with an expansion of the agricultural frontier promoted by the 1940 statute, resulted in genocide against the Aché people during the 1960s and 1970s (Münzel, 1973), shifting the pendulum to brutal direct violence. Aché were not the only peoples subject to violence and egregious human rights violations, so too, among others, were the Enenlhet de Casanillo. In the mid-1970s, international pressure over the Aché case, together with the rise of pro-Indigenous activists and the incipient Indigenous movement promoted by the Marandú Project (Chase Sardi & Susnik, 1995), impelled the state to promulgate the 1981 Law 904/81 “Statute of Indigenous Communities” that created the Paraguayan Institute of the Indigenous (INDI).

In short, Law 904/81 is the starting point for contemporary processes of recognition and restitution of Indigenous lands, but also, and frustratingly so, a source of juridical stagnation. Law 904/81 recognizes the pre-existence of Indigenous communities before the creation of the Paraguayan state, ensures the legal representation of elected or named community leaders, and gives qualifying communities legal personhood. Legal personhood is the process through which Indigenous communities receive state recognition and thereby the right to claim land as collective property owned by the community. The recognition process establishes strict requisites about what constitutes a community and how

communities interface with the state. For example, to obtain recognition, a community must comprise at least twenty families, elect or name specific leaders to represent the community to state agencies, and report such processes to INDI for adjudication and approval. Recognition creates the opportunity to claim collective rights while also tacitly ensuring the state arbitrates the extent of those rights. Beyond recognition, the law ensures that Indigenous communities have the right to communal titling of the lands they currently or traditionally own. Indigenous communities can claim land restitution through an administrative process before INDI and/or the National Institute of Rural Development and Lands (INDERT).<sup>2</sup>

Paraguay established a new constitution with the democratic transition that began in 1989 when Stroessner was forced from power. Importantly, Chapter V of this constitution codifies several principles as inalienable Indigenous rights, such as the pre-existence of Indigenous Peoples before the state and the right to communal property in sufficient extension and quality (exceeding the basic parameter established by Law 904/81), and guarantees a non-encumbrance, lease, or alienation of these lands. Indigenous and pro-Indigenous activists participated decisively in this legal achievement (Melià & Telesca, 1997) that was complemented by the 1993 passage of Law 234 that ratifies Convention 169 of the International Labour Organization (ILO), the endorsement of both the 2007 UNDRIP and the 2016 Organization of American States Declaration on the Rights of Indigenous Peoples (OASDRIPS). Together, the 1992 Constitution, Law 234, and affirmation of UNDRIP and OASDRIPS create a robust *de jure* framework to ensure Indigenous land rights and processes to title lands to Indigenous Peoples.

### *Limits to Indigenous Land Rights*

There are significant limitations to Indigenous People's land rights in Paraguay, starting with the fact that INDI is the only government entity responsible for the restitution of Indigenous land claims. If, for example, an agreement is reached between Indigenous communities and private land-owners, INDI must acquire the claimed lands with the budget allocated to it by Parliament and title them on behalf of the community. Such amicable

<sup>2</sup> INDERT was formerly called the Institute of Rural Wellbeing (IBR), which was created and regulated by the 1963 laws 852 and 854, later repealed after the fall of Stroessner with the 2002 Law 1863.

agreements between Indigenous Peoples and private landowners are unlikely, given the general resistance to selling lands to Indigenous Peoples. What typically works for driving land restitution is Indigenous community advocacy and protest for land claims, accompanied by pressure and legal support from NGOs and Indigenous organizations, as well as international attention (Griffiths, 2015).

To protect claims while they are being processed, precautionary measures must be granted by state judges under Law 43/1989. However, these measures are usually insufficient, even when they are granted, due to the lack of sanctions on landowners who often disregard restrictions through actions like subdividing and selling the land or deforesting it. Furthermore, if there is no agreement between landowners and INDI for the purchase of land, the process advances to Parliament for expropriation. Yet, the past two decades show that Parliament routinely rejects expropriation based on four tired arguments: (1) lands are used for agricultural production and therefore rationally exploited, (2) lands are protected as a private forest reserve, (3) INDI is allegedly corrupt, an observation that could be extended to many state entities, and (4) Indigenous people lack the ability or conditions to care for land, a racist assertion that is sometimes used (Ramírez, 2002).

The Paraguayan state's record in securing lands for Indigenous Peoples is thus quite fraught. From passage of Law 904/81 to the present, state agencies have only acquired 47 percent of land currently secured to Indigenous communities, and often return less land than is guaranteed in the law. To clarify, under the law, communities in the Chaco are entitled to a *minimum* of 100 hectares per family and in the southern region of Paraguay the *minimum* is 20 hectares per family. Differences are based on the diverse ecological factors in both regions, though these minimums are contested as insufficient and dictated by a bias toward agrarian production rather than Indigenous lifeways. Most land purchases have been made through INDI, though the Ministry of Public Works and Communication has also been a source for land restitution when lands are titled as mitigation for infrastructure development impacts.

In summary, several factors align to undermine *de facto* Indigenous land rights. Contemporary trends, influenced by the historical processes and laws we have noted, manifest today as ineffective administrative processes, the inability of INDI to effectively carry out its role due to the constraints or misappropriation of its budget, the insufficient protection and judicial guarantee of Indigenous claims and titled lands, as well as the predominant political will of Parliament and the executive power

to defend the privileges of landowners (Griffiths, 2015; Villagra, 2018). Taken together, these factors clearly show the limits of the institutions and powers of the state to protect Indigenous territorial rights (Villagra, 2021). Recent history has shown that the only way to push the “pendulum” toward justice is through the synergies formed via organized community resistance, which includes alliances between civil society organizations and NGOs that help create international pressure through advocacy and strategic litigation. In terms of litigation, the decisions from the Inter-American System and Universal Human Rights Systems have proven vitally important in Paraguay (Inter-American Court of Human Rights, 2005, 2006, 2010; Inter-American Commission on Human Rights, 1999, 2007, 2020; United Nations Human Rights Committee, 2021). We now turn to discuss the effects of such pressure campaigns and international legal bodies.

### **Implementation Gaps for Rights and the Role of International Human Rights Mechanisms**

Indigenous land rights in Paraguay are tenuous despite a well-established legal framework that has failed due to little institutional support that undermines the effective protections of the law (Villagra, 2021). Reporting on his work across the Americas, former United Nations (UN) Special Rapporteur on the Rights of Indigenous Peoples, Stavenhagen (2006), noted that challenges to Indigenous rights like those in Paraguay can be described as an “implementation gap,” where states fail to ensure that *de jure* rights to land and other protections are enforced in practice (see also Rodriguez & Kauffman, 2015). In fact, the gap between *de jure* and *de facto* Indigenous rights is widespread in the Americas (Wright & Tomaselli, 2019). This dynamic is plain to see in Paraguay when viewed through the lens of Indigenous efforts to reclaim portions of their ancestral territories (Ayala & Cabello, 2006).

Numerous studies show that Indigenous communities with *de jure* land rights in Paraguay experience *de facto* land dispossession (Ayala, 2013; Villagra, 2018). Several factors contribute to this: deforestation driven by expanding agricultural industries (Glauser, 2018), exploitative land renting schemes that undermine the Indigenous tenure (Bogado et al., 2016), state refusal to enforce Indigenous land rights after restitution (Correia, 2019a), and myriad forms of violence from direct physical harm (Correia, 2019b; Cabello Alonso & Ayala Amarilla, 2020) to exposure to agrochemicals associated with soybean production



(Ezquerro-Cañete, 2016; Hetherington, 2020), among others. Given the overwhelming influence of export commodity crops on the national economy and history of land tenure, state institutions seem more inclined to uphold private property rights for agribusiness producers, like soybean farmers and cattle ranchers, than to restore lands to Indigenous Peoples (Barrios, 2021; Schwartzman & Oviedo, 2019). The effects of such *de facto* policy choices are discriminatory along clearly racial lines, whereas Indigenous Peoples are regularly subject to harms of ineffectual policy or direct state actions against them in ways that large-scale non-Indigenous landholders rarely, if ever, experience.

Discrimination against Indigenous Peoples in Paraguay manifests in many ways that intersect with land rights (Quiroga & Ayala, 2014; Glauser, 2018). Lack of secure land rights generates myriad challenges that can be seen across many aspects of Indigenous People's daily life: from sanitation and basic health care to access to formal and traditional education and the ability to create meaningful livelihoods and maintain cultural practices. Land tenure insecurity coupled with compromised living conditions due to dispossession perpetuates marginalization – trends evidenced by the fact that Indigenous Peoples experience the highest rates of infant mortality and official unemployment, as well as the lowest levels of access to formal education and health services in Paraguay (DEEGC, 2012; United Nations Human Rights Council, 2015). These conditions persist regardless of more than thirty years of policy and legal framing to support Indigenous rights. Thus, the denial of land rights – both through resisting restitution and the enforcement of land rights after restitution – is a site where discrimination, racism, and human rights violations are clear to see (Mendieta, 2018; Correia, 2019a; Glauser & Villagra, 2021).

When policies aim to support non-Indigenous landholders and consistently create challenges for Indigenous Peoples seeking formal land rights, such policies perpetuate discrimination. Paraguayan rights organizations have recorded and denounced the Paraguayan state for not acting on the issue of structural discrimination, exploitation, forced labor, and racism against Indigenous Peoples in Paraguay historically and in the present day (International Working Group on Indigenous Affairs, 2008; Iniciativa Amotocodie, 2009; Tierraviva a los Pueblos Indígenas del Chaco, 2013; BASE IS, 2018; Tierra Libre, 2021). The prevalence of discrimination against Indigenous Peoples in general and the racialized enforcement of land rights in specific raises many questions. What happens when the state denies its rights-bearing citizens the

benefit of their rights? What recourse do people have in those instances and where do they turn?

After exhausting all domestic legal options, often the only choice left is to scale up struggles for rights by appealing to international solidarity organizations and human rights organizations with the goal that international pressure will drive local change (Keck & Sikkink, 1998). International human rights organizations have played an important role in shaping the terrain of Indigenous land rights in Paraguay. Numerous international NGOs, like El Centro por la Justicia y el Derecho Internacional (CEJIL), the International Working Group on Indigenous Affairs and Amnesty International, have advocated for Indigenous land rights in collaboration with local Paraguayan organizations. However, we only highlight work by the United Nations (UN) and the Inter-American System in this chapter due to space constraints.

### *International Human Rights Mechanisms in Support of Indigenous Peoples*

The UN human rights monitoring and the Rapporteur for the Rights of Indigenous Peoples have provided vital external reports based on rigorous, impartial investigations that detail ongoing human rights violations against many Indigenous communities in Paraguay (Tauli-Corpuz, 2015; Bhoola, 2018; United Nations Human Rights Committee, 2021). Such reporting shows an enduring pattern of state failure to safeguard Indigenous land rights, which ultimately generates other challenges that undermine wellbeing and result in rights violations beyond, but related to, land (Correia, 2021). The UN reporting has unfortunately done little to shape on-the-ground realities for Indigenous Peoples by changing dynamics of land control and enjoyment of rights, despite being a valuable source and external validation of the work done by national human rights organizations, like Tierraviva a los Pueblos Indígenas del Chaco, the Federación por la Autodeterminación de los Pueblos Indígenas (2015), and the Coordinadora de Derechos Humanos Paraguay.

To be clear, we want to underscore that work by the UN, both via the Rapporteur for the Rights of Indigenous Peoples and standards created by the UNDRIP, has been important for creating political pressure and offering a tool to advocate for legislative change. But the lack of enforcement mechanisms or ability to drive specific actions beyond reprimands and recommendations leaves any action on improving land rights to state

political will characterized by an implementation gap (Stavenhagen, 2006; Rodriguez & Kauffman, 2015; Correia, 2018a). However, a landmark decision by the UN Human Rights Committee in October 2021 found that Paraguay failed to prevent the toxic contamination of the traditional lands of the Ava Guaraní community Campo Agua'ê by a commercial farmer, and thus violated their right and sense of “home” (United Nations Human Rights Committee, 2021). How the Paraguayan authorities receive and comply with the recommendations and reparations dictated by the UN Human Rights Committee is yet to be seen.

The Inter-American System, however, has been a more effective international mechanism that Indigenous Peoples and their allies have used to meaningfully reshape the politics of land rights across the country. The Inter-American System, composed of the Inter-American Commission on Human Rights (IACHR) and the Inter-American Court of Human Rights (IACtHR), is a legal mechanism under the auspices of the Organization of American States used to ensure human rights of member state citizens when states abrogate their responsibilities to protect citizen rights. The IACHR and IACtHR have played a vital role in Indigenous land rights in Paraguay – both by bringing attention to the egregious human rights violations related to Indigenous land dispossession and by creating a juridical wedge that Indigenous activists and their allies can use to push the Paraguayan state to make meaningful material changes in the form of land restitution and related acts.

Procedurally, victims of human rights abuses must first exhaust all domestic legal remedies – that is, in the case of land claims, the administrative process and/or expropriation project – before petitioning the IACHR to adjudicate a case. If the IACHR accepts the case, it works as an intermediary between victims and states to negotiate a friendly settlement. Failure to reach a settlement means the case can be advanced to the IACtHR, which then proceeds as a trial with both sides presenting evidence. The Inter-American System has been used numerous times to adjudicate cases related to Indigenous land rights in Paraguay, though not always with success as evidenced in the 1977 petition for Aché rights abuses resulting from land dispossession and state refusal to uphold their basic rights (Inter-American Commission on Human Rights, 1977). Unfortunately, in that 1977 case, the IACHR only reprimanded the state for its actions but did not move further for Aché land restitution given tenuous tenure laws under the Alfredo Stroessner dictatorship (1954–1989) at the time the case was heard. Beyond the Aché case, the IACHR has issued precautionary measures related to several Indigenous

land rights matters, including but not limited to the following communities: Kelyenmagategma, Yakye Axa, Sawhoyamaxa, Xákmok Kásek, and Ayoreo Totobiegosode peoples living in voluntary isolation.

### *IACHR Land Rights Settlements*

To date, the IACHR has facilitated three land restitution settlements and issued several precautionary measures regarding land rights in Paraguay. The first settlement involved two Enxet and Sanapaná communities – Lamexay and Kayleyphapopyet – who sought land restitution for ancestral territories that had been sold in the late 1800s without their knowledge or permission. Both communities had filed claims for land restitution per Law 904/81 and the national constitution; however, the responsible state institutions never resolved the land claim. The IACHR facilitated a friendly settlement that returned 21,844.44 hectares of land to the communities in 1999 (Inter-American Commission on Human Rights, 1999).

The second settlement involved the Enxet community of Kelyenmagategma. Like Lamexay and Kayleyphapopyet, Kelyenmagategma lands were sold without community permission, though community members had remained on the lands to work as ranch hands, often for little or no pay. After petitioning the Paraguayan state for land restitution in accord with the law, relations with the Algarrobo SA ranch administrators soured to the point that multiple violent dispossession occurred under the watch of Paraguayan police where ranching staff burned houses, threatened community members with direct violence, and because of the ensuing melee, one elderly woman from the community, Teresa Gaona, died (Inter-American Commission on Human Rights, 2007). The state's failure to facilitate land restitution and the role of police during multiple violent attacks impelled the IACHR to facilitate a friendly settlement that was reached in 2011 with the return of 8,748 hectares of land to Kelyenmagategma.

The IACHR adjudicated the third and most recent friendly settlement regarding the Mbya community of Y'aká Marangatu. Like the two settlements that preceded it, the state refused to adjudicate Y'aká Marangatu land restitution petitions, effectively forcing the community in a decades-long conflict with soybean farmers who sought the community's lands (Inter-American Commission on Human Rights, 2020). However, in 2020 the state agreed to restitute the 219 hectares in question to the community. In each friendly settlement, land restitution underpins

community claims – though it is also worth noting that the process has resulted in other material gains for communities, such as indemnity payments or environmental impact monitoring.

### *IACtHR Land Rights Judgments*

The IACtHR has issued three judgments regarding Indigenous land rights in Paraguay to date: the Enxet community Yakye Axa (Inter-American Court of Human Rights, 2005), the Enxet community Sawhoyamaxa (Inter-American Court of Human Rights, 2006), and the Sanapaná and Enxet community Xákmok Kásek (Inter-American Court of Human Rights, 2010). While each case is distinct, they share some common themes. All are in Paraguay's western Chaco region, where lands were sold without Indigenous consultation and converted to extensive cattle ranching. The Paraguayan state repeatedly failed to adjudicate each community's respective land claims, thus aggravating their dispossession and related human rights abuses. Each community confronted fierce resistance from landowners who refused to negotiate for the return of their core ancestral territories. Although the state has returned at least part of the land each community claims, the restitution to each community following IACtHR judgments has been excruciatingly slow – over a decade in each instance and in one case nearly twenty years.

In summary, the Inter-American System has played an important role in facilitating land restitution and enforcing Paraguay's land rights framework. The ability of Indigenous communities to regain portions of their ancestral territories through friendly settlements and strategic litigation before the IACtHR effectively advances Indigenous land rights. In turning to international human rights bodies, Indigenous Peoples and their allies have secured important legal victories with meaningful material changes for many communities, including state institutional reforms and the establishment of monitoring mechanisms (Villagra, 2021). Yet such advances also make clear the persistence of the "implementation gap" that haunts contemporary land rights dynamics in Paraguay and thus international pressure seems necessary to force the state to ensure its rights framework. Once at the vanguard of Latin America or land rights in the early 1990s, the country's judicial mechanisms to support Indigenous land rights run up against state resistance for the return of lands because of disruptions to agribusiness interests, something that has clear discriminatory effects on Indigenous Peoples.

### Barriers and Threats to Indigenous Land Rights

The current situation of Indigenous Peoples in Paraguay illustrates a systematic violation of their rights and shows an implementation gap in the recognition and enforcement of land rights. The policy pendulum has swung from *justice* back to *violation*. Given the historic and contemporary trends we traced earlier, Indigenous Peoples continue to be excluded from an economic model that privileges agrarian sectors, which have become increasingly violent and humiliating for Indigenous Peoples (Cabello Alonso & Ayala Amarilla, 2020, p. 50). The dispossession and the prevailing economic model not only impact Indigenous wellbeing in many ways but also result in a profound socio-economic inequality, where 65 percent of Indigenous Peoples now live in poverty and more than 30 percent in extreme poverty (DGEEC, 2017). As Imas et al. (2020) show, 97.9 percent of Indigenous Peoples in Paraguay have at least one unmet basic need, like adequate water access, health care, or sanitation. Foundational to these needs is land tenure. In this section, we illustrate the land inequity in Paraguay, with those lands already secured for Indigenous Peoples being patently insufficient. In addition to titling, demarcation and delimitation delays, we suggest that land leasing and evictions are among the most important challenges to Indigenous land rights today.

There is a clear discrepancy between the amount of land that the constitution guarantees to Indigenous Peoples and that which Indigenous Peoples actually possess or claim because state officials ascribe to the strict limits outlined in Law 904/81 instead of the constitutional view of land rights. The exact quantity of land under Indigenous control is difficult to ascertain because there is no consolidated registry of such data, despite improved land registries at the state and private levels. According to the first official national population census conducted in 1981, 38,703 people were identified as Indigenous. Of the three main peoples in the Eastern Region – the Paĩ-Tavyterã, the Mbya Guaraní, and the Ava Guaraní – 20, 80, and 30 percent respectively had nowhere to settle because of land reforms and historic dispossessions (Brunn et al., 1990, p. 14). However, some ten years later the state registered 471,655 hectares of land to 254 recognized communities throughout the country (Brunn et al., 1990) with an Indigenous population that totaled 49,487 (Melià & Telesca, 1997). The 2002 census provided a more comprehensive count through a participatory methodology and estimated 87,099 Indigenous Peoples among 414 Indigenous communities (see Table 2.1).

Table 2.1 Statistics on Indigenous Peoples and land tenure 1981–2020

Year	Total Indigenous population in the country	Total Indigenous lands guaranteed	Total Indigenous communities in the country	Total number of communities renting	Percentage renting of the total
1981	No data	38,703	No data	No data	No data
1992	471,655	49,487	254	No data	No data
2002	717,952	87,099	415	120	29%
2012	963,953	117,150	493	182	37%
2020	1,143,945	125,227	521	192	37%

This survey also included land conflicts and tenure data (DGEEC, 2003) that showed deforestation impacted 120 of the identified communities and 185 (44.7 percent) had no land of their own (Kretschmer & Rehnfeldt, 2005, pp. 44–46). In 2006, Indigenous organizations estimated that a total of 717,952 hectares were now guaranteed across the whole country (Ayala & Cabello, 2006, pp. 362–363). The most recent census in 2012 recorded 493 communities where 357 had land title and 134 did not; two communities did not report data (DGEEC, 2015) (see Table 2.1). According to Villagra (2018), there are currently some 521 communities, plus 272 villages and neighborhoods and 47 family groupings across Asunción and the Metropolitan Area of the Central Department – that is, 840 groups or collective units.

As discussed earlier, while some land has been returned to Indigenous communities, the returned lands are insufficient even in light of the minimum baseline established by the now outdated Law 904/81. Indigenous land rights outlined in Law 904/81 are clearly influenced by agrarian reforms intended for non-Indigenous *campesino* families because the law states that each Indigenous family within a recognized community is entitled to twenty hectares of land in the eastern region of Paraguay and 100 hectares of land in the Chaco region. That baseline calculus used to determine land restitution ignores Indigenous territorial relations and reduces them to property relations. However, when using that baseline as a standard to measure state compliance with Indigenous land restitution, the total amount of land returned to Indigenous communities in the eastern region nearly meets the legal requirements. By the same measure, the state has returned less than 50 percent of lands eligible

to Indigenous communities in the Chaco. In addition, there are now claims that transcend individual communities and refer to *peoples* who are seeking to recover and manage their own contiguous *territories* (Casaccia, 2009; Inter-American Commission on Human Rights, 2016). And yet the Executive branch has just reduced the 2021 budget for land purchases by 381 percent compared to 2020. The tensions present in the dynamics of land restitution illustrate that policy shifts regarding land restitution are akin to a *pendulum*, pushed back and forth from the direction of *justice* through organized resistance for specific cases, or in the direction of *violations* for repressive acts by prevailing political and economic interests centered on the control of land.

The delay in titling, demarcation, and delimitation is proportional to the pace of progress and expansion of agribusiness, which continues to put pressure on Indigenous territories. Thus, communities that do not have leaders and lawyers to navigate the land restitution procedures end up losing hope of recovering part of their territory, often dispersing in other communities, in urban centers, or roadsides (Tierraviva a los Pueblos Indígenas del Chaco, 2013). Yet these delays continue even after land restitution because it commonly takes years to title land on behalf of communities and to carry out necessary legal requirements. The irregular titling process, coupled with the lack of a reliable cadaster, threatens the legal security of Indigenous communities and hinders the implementation of development projects from both the private and public sectors. Moreover, the common practice of granting environmental licenses that allows the deforestation of areas used by Indigenous Peoples, without a mechanism to review or challenge the issuance of such licenses, runs counter to IACHR's statements about the implementation of development plans and projects without first fully identifying and guaranteeing communal property rights through titling, delimitation, and demarcation (Inter-American Court, 2006).

The lease and rental of Indigenous lands to third parties is frequently practiced and constitute one of the greatest *de facto* threats to Indigenous land rights in Paraguay. The rental of Indigenous lands flagrantly violates the guarantees of Constitution Article 64 that prohibits the lease of Indigenous lands. Many Indigenous communities are effectively forced into renting portions of their lands for cattle pasture, soybean cultivation, and timber extraction because few economic opportunities exist outside of the predominant agro-export development model. Land renting is both a consequence of structural economic and social inequalities as well as a practice that reproduces extreme poverty among Indigenous populations because lands are often severely degraded by agricultural activities



with few economic outcomes for community members. Studies also point to other serious effects because renting is often endorsed, if not directly carried out and protected using public force by municipal authorities, corrupt INDI officials, local politicians, prosecutors and police (Villagra, 2018). Such outcomes reveal not only the challenges Indigenous Peoples face to access justice, but also the partiality of government officials.

Finally, forced evictions and the criminalization of Indigenous leaders have become the main threat and a tool for agribusiness to advance its interests in Indigenous territories. While violence has long been associated with the antagonistic relationships between the agribusiness sector and many Indigenous communities in Paraguay (Correia, 2019b; Quiroga & Ayala, 2014; Tauli-Corpuz, 2015; Tusing, 2021), an alarming spark in direct violence marks a re-emergence in the undermining of Indigenous land tenure in times of the pandemic. Between May and November 2021 alone, at least eight Indigenous communities were violently expelled from their territory, as noted in Table 2.2. By forced eviction we mean the permanent or temporary removal of individuals, families, and/or communities from the homes and/or lands they occupy,

Table 2.2 Indigenous communities dispossessed of land in 2021. Data derived from Barrios (2021)

Date	Community/People	District/Department	Number of families
May 13, 2021	Cerrito/Ava Guarani	Minga Porá/Alto Parana	85
June 1, 2021	Yvy Porá/Ava Guarani	Santa Rosa del Aguaray/San Pedro	80
June 6, 2021	Acaraymí/Ava Guarani	Itakyry/Alto Parana	150
June 16, 2021	Ka'a Poty/Ava Guarani	Itakyry/Alto Parana	Unknown
July 7, 2021	Cristo Rey/Ava Guarani	Yvyrarovana/Canindeyú	100
July 8, 2021	Tekoha Ka'avusu/Ava Guarani	Itakyry/Alto Paraná	60
November 18, 2021	Hugua Po'i/Mbya	Raúl Arsenio Oviedo/Caaguazú	70
November 29, 2021	Cerrito/Ava Guarani	Minga Pora/Alto Paraná	80

without appropriate means of legal or other protection, or access to such means (ESC Committee, 1997). The increasingly common use of armed non-state agents in the execution of illegal evictions must also be added to this list (Cabello & Ayala, 2020).

### Conclusions: Recognition and the Road Ahead

Reflecting on the swinging policy pendulum of land rights in Paraguay – from *violation* to *justice*, and then back to *violation* – the new era of land dispossession marks a new period of violations against Indigenous Peoples in the country. The politics and practice of Indigenous land rights in Paraguay reveal the limits of the country's current policy framework, despite major legal victories like passage of Law 904/81, the adoption of Chapter V of the 1992 Constitution, and ratification of ILO 169 that promised more equality. The IACtHR called into question these limits in each of its three rulings against Paraguay (Inter-American Court of Human Rights, 2005, 2006, 2010), and recommended necessary legal and institutional reforms that the state has yet to comply with. More than a matter of creating new laws and mechanisms to support land rights, our work here suggests that the longstanding influence of land-extensive agricultural commodity production has been a key driver of socio-economic inequality and racial marginalization that undermines Indigenous wellbeing.

Despite having a clear process to recognize Indigenous communities and adjudicate land restitution – as indicated in the national constitution and Law 904 – the actual process of returning lands and securing them after restitution is riddled with problems. Those problems often emerge when communities that have gained legal personhood in accordance with the law demand restitution of lands that are privately held and often used for agricultural production by non-Indigenous Peoples. Given the Paraguayan state's strict interpretation that "rationally exploited" land cannot be expropriated or returned to Indigenous communities without voluntary landowner permission (Correia, 2018b; Inter-American Court of Human Rights, 2006), the political economy of agricultural commodity production effectively takes precedence over Indigenous rights and the minimum guarantee of land restitution that recognition should ensure. Given this situation, looking forward, the most important safeguard of Indigenous land rights in Paraguay will be robust cross-sector alliances, led by Indigenous communities in collaboration with local rights-focused NGOs and international advocacy organizations; these

alliances will have to work with sympathetic lawmakers to advance and safeguard land rights and, if necessary, appeal to international human rights bodies to bring further pressure on the state to act consistently with the law.

The chapter highlights that legal recognition has been used to appeal to international human rights bodies where violations of due process have been addressed in IACtHR judgments, IACHR friendly settlements, and a recent UN Human Rights Committee decision. In this regard, strategic alliances between Paraguayan NGOs, advocacy organizations, and Indigenous communities have used recognition to bridge the gap between *de jure* and *de facto* rights in specific cases discussed earlier. Although it is undeniable that implementing the Inter-American System recommendations and judgments has been challenging (Correia, 2021; Open Society Justice Initiative, 2017), Indigenous Peoples and their allies use strategic litigation, advocacy, negotiation, and direct actions to push the pendulum further in the direction of *justice*. The road ahead is uncertain, as new legislative initiatives further threaten to undermine Indigenous land rights and the current wave of violent dispossessions continues unabated. However, our Indigenous collaborators and interlocutors have not lost faith in the promise of land rights and their ability to recover and rebuild their relations with their ancestral territories. We too maintain that the struggle for Indigenous land rights in Paraguay must continue until each community has its land back and is able to determine the path of its own future.

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