

UNIVERSITY OF DEUSTO

European Master's Degree in Human Rights and Democratisation
A.Y. 2017/2018

The importance of cultural diversity and local perceptions in ensuring the effective protection of human rights:

A study of the Sawhoyamaxa case

Author: Giovanna Park
Supervisor: Felipe Gómez Isa

Abstract

In order for human rights to be relevant to all and to ensure the protection of the most vulnerable members of society, it is necessary that human rights to be considered from a local perspective.

There is limited research regarding the effectiveness of the impact that a dialogue between the local and the global can have on the effective protection of rights. Seeking to investigate this concept further, this thesis explores how human rights and their violations are viewed, and how the consideration of such nuances by international protection mechanisms can have an impact, at local level.

These questions are answered through a case study of the Sawhoyamaxa Indigenous Community v. Paraguay case deliberated by Inter-American Court of Human Rights. This case is an example of the Court's progressive jurisprudence regarding its consideration of the cultural and spiritual connection that indigenous peoples have with their land in its interpretation of the right to property.

In order to explore the above concepts, this thesis focuses on the impact that the violation of the Sawhoyamaxa Indigenous Community's right to property, in the form of the expropriation of their land, had on their culture and the subsequent impact of the Inter-American Court's sentence.

Acknowledgements

Firstly, I would like to thank the Sawhoyamaxa Community for their hospitality and openness, without which this study would not have been possible. I would also like to give special thanks to Eriberto Ayala, for being my guide and for ensuring that none of the obstacles encountered got in the way of my fieldwork. I am also grateful to the TierraViva team for their guidance as well everyone who lent me their valuable time to contribute to this research.

I would also like to thank Tina for her hospitality and support even when on the other side of the world and Paco for being the best Paraguayan little brother I could have asked for. Furthermore, I would like to express my appreciation of the constant support and encouragement that Felipe Gómez Isa, my supervisor, has shown me throughout this process – *exceri casco!*

I am truly grateful to my parents for their unconditional support and for allowing me to be a student one last time. I would also like to thank Matt, for his infinite patience, endless encouragement and for pretending to always look interested even the times in which he was not.

Finally, I would like to show my appreciation to all my friends who have supported me throughout the year, particularly during my time in Bilbao. An extra thank you to the Rain Explorers and Bilbo who made sure to keep me smiling even through the times when it seemed like the rain would never end.

Table of Acronyms

IACtHR	The Inter-American Court of Human Rights
UDHR	The Universal Declaration of Human Rights
ACtHPR	The African Court of Human and Peoples' Rights
ECtHR	The European Court of Human Rights

Table of Figures

Figure 1:	Traditional food sources for the Sawhoyamaxa Community detailed during the research conducted
Figure 2:	Traditional Sawhoyamaxa dances
Figure 3:	Coming of age rituals

‘Indigenous communities have a special relationship with the land on which they live, because it constitutes the basis for their cultural identity. World Council of Indigenous Peoples has once stated that:

next to shooting indigenous peoples, the surest way to kill us is to separate us from our part of the earth’¹

¹ Yvonne Donders, *Towards a Right to Cultural Identity?* (Intersentia 2002) 203.

Contents Page

Abstract	2
Acknowledgements	3
Table of Acronyms	4
Table of Figures	4
Chapter 1: Introduction.....	8
1.1 Case selection	9
1.2 Research questions	10
1.3 A definition of culture	12
1.4 Contribution.....	12
1.5 Structure.....	13
Chapter 2: Literature Review	13
2.1 Universalism v. cultural relativism	13
2.2 Globalisation’s effect on the universalism vs. cultural relativism debate ..	16
2.3 The localising human rights framework	18
2.5 The ‘vernacularisation’ of human rights	20
2.6 The scope for the practical application of an exchange between the local and the global and some current examples	21
Chapter 3: An Analysis of the Case Law of the Inter-American Court of Human Rights Interpretation of the Right to Property.....	23
3.1 A Focus on indigenous peoples lands rights cases	23
3.2 A confirmation of the universality of human rights.....	24
3.3 Human rights treaties as live instruments.....	25
3.4 The concept of use and enjoyment	26
3.5 The right to property from the perspective of indigenous peoples	27
3.6 The collective right to property.....	28
3.7 Concluding remarks.....	30
Chapter 4: Research Methodology	31
4.1 Methods of data collection	31
4.2 Rationale for a case study	32
4.3 Case selection	32
4.4 Multi-method design	33
4.5 Focus groups	34
4.5.1 Reflections.....	34
4.5.2 Focus groups as semi-structured	35
4.6 Semi-structured interviews.....	36
4.7 Interview guides.....	36
4.8 Variables.....	37

4.9 The selection of participants.....	37
4.10 Research ethics.....	38
4.11 Technical Application	39
4.11.1 Transcription.....	39
4.11.2 Material sampling	40
4.11.3 Methods of analysis.....	40
4.12 Limitations, challenges and reflections.....	40
4.12.1 Weather conditions and time limitations	40
4.12.2 Translation	40
4.12.3 The role of the translator	42
4.12.4 The scope of the sample	42
4.18 Reflexivity.....	42
Chapter 5: Contextual Analysis	43
5.1 Indigenous peoples in Paraguay.....	43
5.2 Historical context.....	46
5.3 Case summary.....	48
5.4 The importance of culture in the Sawhoyamaxa case.....	49
5.5 Reparations	50
5.6 Sawhoyamaxa’s current situation.....	51
5.6.1 Provision of basic services	52
5.6.2 Development fund	53
5.6.3 Lack of legal land titles	53
5.7 Concluding Remarks.....	54
Chapter 6: Data Analysis.....	54
6.1 Sustenance practices.....	55
6.1.1 Hunting, fishing and foraging.....	55
6.1.2 Agricultural practices	57
6.1.3 Sharing and community organisation	58
6.2 Shamanism and traditional healing practices.....	60
6.3 Other land use and artisanal activities	62
6.3.1 Clothing	62
6.3.2 Weaving.....	63
6.4 Housing.....	63
6.5 Rituals and ceremonies	64
6.5.1 Burial ceremonies.....	64
6.5.2 Dances	66
6.5.3 Coming of age ceremonies	67
6.6 Language	68
6.7 The importance of the land.....	69
Chapter 7 : Conclusion	71
Bibliography.....	81
Annexes.....	86

Chapter 1

Introduction

This thesis departs from the belief that in order to effectively ensure the protection of human rights and effective reparations of violations on a global scale, human rights must be considered from a local perspective. Considering the debates detailed in Chapter 2 and the current human rights challenges being faced at an international level, it is evident that human rights now more than ever, ‘must be re-conceptualized as multicultural if they are to become a genuine common language of humanity’². If alternatively, they continue to be conceived and imposed, as they have been, as universal, ‘human rights will always be an instrument of Samuel Huntington’s ‘clash of civilizations’, that is to say, of the struggle of the West against the rest’³.

The localising human rights framework created by Koen De Feyter, and the methodology constructed in order to further research on the localisation of rights, have served as the base on which this investigation was further developed. A unique element of De Feyter’s approach is considering the necessity of creating a ‘two-way highway: from global to local and from local to global’⁴ in order to further the interpretation and elaboration of human rights norms and develop effective human rights action⁵.

There is limited research regarding this relationship between the local and the global and the effectiveness that this dialogue can have when such an approach is adopted by international protection mechanisms. In order to contribute to this limited body of research, this investigation will explore how human rights violations are interpreted at local level, and the impact global rights protection mechanisms can have if these perceptions are taken into consideration, through a combination of literature review,

² Felipe Gómez Isa, ‘Cultural Diversity, Legal Pluralism, and Human Rights from an Indigenous Perspective: The Approach by the Colombian Constitutional Court and the Inter-American Court of Human Rights’ (2014) 36 Human Rights Quarterly 722, 726.

³ Boaventura de Sousa Santos, ‘Toward a Multicultural Conception of Human Rights’ in Felipe Gómez Isa and Koen De Feyter (eds), *International Human Rights Law in a Global Context* (2009) 104. As cited in Gómez Isa (n 2) 725.

⁴ Koen De Feyter, ‘Localizing Human Rights’ [2006] IDEAS Working Paper Series from RePEc 9.

⁵ *ibid* 5.

case law analysis and primary data collection. The following research questions were formulated for this purpose.

- 1.) How are human rights and the impact of their violations viewed from a ‘local’ perspective?
- 2.) How can international protection mechanisms use this knowledge to have an impact at local level?

1.1 Case selection

In order to remain within a realistic scope for this thesis, a case study was chosen as the appropriate methodology for this piece of work. A focus on the Inter-American Court of Human Rights (IACtHR or the Court hereafter) as an example of a international human rights protection mechanism which continues to lead in its progressive consideration of cultural diversity and the local was decided upon. Following a preliminary analysis of the relevant case law, land rights cases were selected as an area of focus, in particular in regard to the Court’s progressive interpretation of Article 21 in judgments regarding indigenous peoples. Such cases were chosen for their clear demonstration of the adoption of what has been coined as ‘multicultural jurisprudence’⁶, showing a move by the Court towards the consideration of local perspectives and cultural diversity in its interpretation of human rights. An analysis of the relevant case law can be found in Chapter 3. The *Sawhoyamaxa Indigenous Community v. Paraguay* case was selected following this analysis due to its clear match with the criteria created in the localising human rights methodology, further elaborated upon in Chapter 2.

The case regards the Paraguayan State's failure to acknowledge the Sawhoyamaxa Indigenous Community’s (hereinafter, the ‘Sawhoyamaxa Community’, ‘Sawhoyamaxa’ or the “Community”) property rights to their ancestral land. During the period that their claim was pending, the community lived in a state of extreme

⁶ Gómez Isa (n 2) 724.

vulnerability by a national road alongside the fenced off territory they were reclaiming. Various fatalities were reported in this period as a consequence of the negligence of the State to provide adequate protection measures to the Community. In 2006, the Court found violations of the right to a fair trial and judicial protection, the right to property, the right to life, and the right to recognition as a person before the law. Further details will be elaborated upon in subsequent chapters.

The jurisprudence of the IACtHR demonstrates the recognition of the theory that, as summarised by Donnelly:

‘Different places at different times will draw on different cultural resources to provide support for (and opposition to) human rights. The different cultural idioms by which human rights are justified and explicated are of immense local importance. Therefore, effective advocacy of human rights requires knowledge of and sensitivity to how human rights fit with local cultures – and histories, and economies, and ecologies, and social structures’⁷.

The acknowledgment of the importance of cultural idioms in order to effectively protect human rights is clearly exhibited in the Sawhoyamaxa case in the Court’s progressive interpretation of the violation of the right to property. How the human rights in question, and consequently the violations suffered, are interpreted at local level and the impact of the IACtHR’s consideration of these nuances will be explored in the subsequent manner.

1.2 Research questions

A comprehensive impact assessment of the case is outside of the scope of this thesis considering its length and time limitations and therefore, in order to reduce the scope of the investigation and apply the research questions to the selected case, the decision was made to focus the Community’s culture. How Sawhoyamaxa’s culture was affected by the violation, and the impact of the reparations provided, will be explored

⁷ Jack Donnelly, *Universal Human Rights in Theory and Practice* (3rd ed, Cornell University Press 2013) 112.

from the perspective of the main actors involved in the process of territorial reclaim. Consequently, the overarching research questions were reinterpreted as follows:

‘How are human rights and the impact of their violations viewed from a ‘local’ perspective?’ was reframed in the following way:

1.) What impact did Sawhoyamaxa’s lack of access to their land have on their culture?

This creates the following sub questions.

- What made up Sawhoyamaxa’s culture prior to the violation?
- How did Sawhoyamaxa’s culture change during the period spent outside of their territory?

In relation to the second research question, ‘how can international protection mechanism use this knowledge (of local perspectives) to have an impact at local level?, the impact that the IACtHR’s sentence has had on the Community’s culture will be analysed. This reframes the question and creates the following sub question as follows.

2) What impact did the IACtHR’s sentence have on the Sawhoyamaxa Community’s culture?

- What effect did the eventual return to their lands have on Sawhoyamaxa’s culture?
- How did the other reparations have an impact on Sawhoyamaxa’s culture?

1.3 A definition of culture

It is important at this stage to define what is understood by culture in this piece of work. Culture, and the elements that make up what is identified as culture for particular groups, has been defined in a variety of ways. For the purpose of this research, the concept of culture will be regarded as ‘the set of distinctive spiritual, material, intellectual and emotional features of a society or social group ... in addition to art and literature, lifestyles, ways of living together, value systems, traditions and beliefs’⁸. Exactly what constitutes Sawhoyamaxa’s culture will be defined by the Community, which will establish the variables that will be analysed in regard to the impact of the human rights violation in question. It must be noted that, although the changes in cultural practices and traditions that have occurred as a consequence of the violation will be analysed, it is recognised that culture is not inherently a static concept, which will be further discussed in the conclusive remarks.

1.4 Contribution

This piece of work contributes towards the body of research analysing the localisation of human rights and the impact of the consideration of the local by global mechanisms from the perspective of rights holders. Furthermore, a study with a specific focus on the Community’s culture has not been conducted and therefore this research will provide original work on the effects that a lack of land and resettlement from the perspectives of the Sawhoyamaxa Community and the main actors involved in their claim. It will also bring to light the challenges still faced by the Community due to the untimely and incomplete implementation of the IACtHR’s sentence, by the Paraguayan government.

⁸ ‘UNESCO Universal Declaration on Cultural Diversity’ (UN Educational, Scientific and Cultural Organisation (UNESCO) 2001)
<http://www.unesco.org/new/fileadmin/MULTIMEDIA/HQ/CLT/pdf/5_Cultural_Diversity_EN.pdf>
accessed 5 February 2018.

1.5 Structure

The investigation begins with an analysis of the relevant conceptual debates regarding cultural relativism and universalism as a way of introducing the context in which the localising human rights framework was developed. The elements of the framework of relevance to this work will be explored, followed by an analysis of the IACtHR's case law demonstrating its progressive interpretation of the right to property. The methodology used for the fieldwork conducted will be detailed in the subsequent chapter, followed by contextual information to frame the case study. Finally, an analysis of the data collected and a discussion of the findings in relation to the research questions posed will be presented.

Chapter 2 Literature Review

2.1 Universalism v. cultural relativism

It is important to begin by mentioning the ongoing debate between universalism and cultural relativism in regard to human rights. At the core of the debate is whether modern human rights concepts should be viewed and treated as universal in content and applicability or alternatively as culturally relative, adaptable to particularities found in different societies and contexts. Although a detailed analysis of this complex debate falls outside the scope of this thesis, as the starting point from which this research evolved, it is relevant to briefly analyse some of its features and developments. As Donnelly identifies, the tension between universalism and cultural relativism can be found in regard to human rights at various levels: in relation to the very construction of the concept of human rights, in their interpretation and also in their implementation⁹. Such tensions will be explored following the author's belief 'that the answer to the "universality" question matters on the ground'¹⁰.

⁹ Donnelly (n 7) 100.

¹⁰ Michael Goodhart, 'Neither Relative nor Universal: A Response to Donnelly' (2008) 30 Human Rights Quarterly 183, 185.

It is relevant to briefly summarise some important historical developments surrounding the wider debate. ‘In the 1970s and 1980s, the dominant tendency was to see universality and relativity as opposites’¹¹, provoking heavily charged disputes in relation to all the levels referred to above. This resulted in the extreme polarization of perspectives, ‘universalists criticised relativists as moral nihilists, they assumed that relativists accepted all the practices of a society, including the oppression of women and vulnerable groups’ and when ‘relativists asserted tolerance for difference, they usually defended cultures as wholes’¹². This debate, even in less radical manifestations, has had a major impact on the effective mainstreaming, application and protection of human rights since this concept appeared on the global stage. It has provoked criticism of the human rights regime as a form of neo-colonialism imposed by the powers that created the Universal Declaration of Human Rights (hereafter UDHR) and subsequent United Nations mechanisms, leading to the questioning of the legitimacy of the very concept of rights. This scepticism exists also in regard to interpretation and implementation, the effectiveness of the one-size fits model is unremittingly challenged.

Both the importance, along with the lack of resolution, of such tensions was clearly displayed during the Vienna World Conference of Human Rights in 1993 in the heated discussions on the matter between States, the resulting in the politicisation of the debate and the discussion becoming ‘unhelpfully polemic and each theory too inflexible’¹³. Following much debate, States reached what some have since referred to as a compromise, recorded in the Final Declaration of the Conference¹⁴. The Vienna Declaration begins by reiterating that ‘the universal nature of these rights and freedoms is beyond question’¹⁵ before going on to state that ‘the significance of national and regional particularities and various historical, cultural and religious

¹¹ Donnelly (n 7) 103.

¹² Sally Engle Merry, *Human Rights and Gender Violence: Translating International Law into Local Justice* (2009) 8
<<http://www.myilibrary.com?id=253751&entityid=https://idp.warwick.ac.uk/idp/shibboleth>> accessed 26 May 2018.

¹³ Claire Charters, ‘Universalism and Cultural Relativism in the Context of Indigenous Women’s Rights’ [2003] SSRN Electronic Journal 18 <<http://www.ssrn.com/abstract=2887711>> accessed 26 May 2018.

¹⁴ Gómez Isa (n 2) 733.

¹⁵ ‘UN General Assembly, Vienna Declaration and Programme of Action’ (UN GAOR 1993) A/CONF.157/23 <<https://www.ohchr.org/Documents/ProfessionalInterest/vienna.pdf>> accessed 1 May 2018.

backgrounds must be borne in mind' in their application by States. Some critics have interpreted this outcome as a demonstration of the lack of consensus regarding the adoption of a global common approach and a failure by the international community to settle the substantive issue. On the other hand, one may argue that the Vienna Declaration in fact reveals the need to consider the combination of both models and demonstrates an international consensus regarding the universality of human rights that must be applied whilst considering local particularities. As can be seen during the 1990s, various scholars and advocates adopted this view as 'most discussions have tried to move beyond dichotomous presentation'¹⁶. Although it cannot be denied that States continue to justify human rights violations and excuse a lack of sufficient protection measures by reverting back to the extreme ends of both ideologies, 'most defenders of both universality and relativity today recognize the dangers of an extreme commitment and acknowledge at least some attractions and insights in the positions of their critics and opponents'¹⁷. This is evident if one analyses the various concepts that emerged from this point in time onwards such as, 'inculturated universality'¹⁸ (Etxeberria), 'relative universality'¹⁹ (Donnelly), 'inclusive universality'²⁰ (Brems) and 'vernacularisation'²¹ (Merry), to mention but a few.

As Walker explains, behind a large part of the this body of work attempting to reconcile cultural relativism and universalism, is the belief that 'there is an internal connection between the very idea of human rights - with its strong suggestion of the equal worth of all humans - and a common standard of protection, with all that this connection implies by way of universal claims'. Simultaneously, there is a strong consciousness 'that any rights-regarding regulatory architecture must accommodate difference, and so particularize, in a manner that qualifies or even challenges the underlying universalism'²². The challenge that is then posed is that of identifying 'the ways in which human rights both are and are not both relative and universal – and to

¹⁶ Donnelly (n 7) 103.

¹⁷ *ibid.*

¹⁸ Xabier Etxeberria, 'El Debate Sobre La Universalidad de Los Derechos Humanos', *La Declaración universal de derechos humanos: un estudio interdisciplinar*. (Instituto de Derechos Humanos 1999) 385.

¹⁹ Donnelly (n 7).

²⁰ Eva Brems, *Human Rights: Universality and Diversity* (Kluwer Law International 2001) 229–340.

²¹ Merry (n 12).

²² Neil Walker, 'Universalism and Particularism in Human Rights: Trade-Off or Productive Tension?' [2012] SSRN Electronic Journal 1–2 <<http://www.ssrn.com/abstract=2021071>> accessed 1 March 2018.

avoid either treating the universal as if it were relative or falsely universalizing the particular²³. It is relevant to note the importance of such a task as it impacts all three levels mentioned previously, and it is a combination of these that directly affects human rights on the ground. As Gómez describes:

*'We are at an interesting point when we need to move towards developing a conception of human rights that is more open to diversity and other forms of understanding human dignity. Ultimately, it is a question of opening the doors to an inclusive universality in which, through sincere and open intercultural dialogue, it is possible to determine the minimum requirements for a transcultural conception of dignity'*²⁴.

Theories such as those mentioned above, as well as others pertaining to the body of work taking on this challenge, strive to conceptualize the opening up of the universalist global system to cultural diversity and local perceptions. This research will not explore the variety of definitions, models and compromises that have resulted from these on going endeavours to reconcile the cultural relativism vs. universalism debate. However, examples of how these tensions can lead to productive developments in relation to rights interpretation and protection will be further analysed.

2.2 Globalisation's effect on the universalism vs. cultural relativism debate

Particular focus will now be given to the ways in which the consequences of globalisation have exuberated the risk of the polarisation of the above debate due to the increased tension between the global and the local that it provokes. This has a direct impact on the protection of human rights on the ground producing an ever more urgent need to develop solutions to such tensions.

Firstly, it is relevant to question why 'has a tension already central to the modern political age found a new and even more vivid expression under conditions of

²³ Donnelly (n 7) 104.

²⁴ Gómez Isa (n 2) 729.

globalisation?’²⁵. Walker suggests that it is a combination of the following consequences of this phenomenon that provide the answer. Globalisation has resulted in the greater exposure to mutual differences as well as similarities across different societies, which are in turn reinforced and influenced by increasingly powerful actors and structures on a global scale.

‘Crudely, then, in the ‘compression chamber’ of globalization our similarities and differences of life experiences and life-chances alike are amplified, as are our perceptions of what is valuable or otherwise both in the common standards to which we aspire and the different conceptions of the good life we inherit and pursue. These amplifications find a strong echo, but also a reinforcing cause, in the perspectives of universalism and particularism through which the human rights project is addressed and pursued’²⁶.

This increasing polarisation of the debate influenced directly by the effects of globalisation further jeopardises the effectiveness of human rights protection mechanisms reaching those in need. Additionally, the ever-increasing power, accompanied by lack of accountability, of private actors and inter-governmental organizations, along with the polemic issue of extra territorial jurisdiction, pose further risks in this shift away from the local to the global. There is a clear acknowledgement within the human rights community of the potential risks incurred as a consequence of decisions, whose effects are felt at local level, being increasingly made in the international arena. As Wilson explains, ideas of and struggles for human rights ‘are embedded in local normative orders and yet are caught within webs of power and meaning which extend beyond the local’²⁷. Thus, it is clear that in order to attempt to effectively tackle the negative consequences of globalisation in a way that is relevant to all, ‘human rights will need to be localised’²⁸. The concept of the local effectively informing and influencing that which transpires at a global level and vice versa will be explored in further depth in the context of the localisation of human rights framework developed by Koen De Feyter.

²⁵ Walker (n 22) 7.

²⁶ *ibid* 7–8.

²⁷ Richard A Wilson (ed), *Human Rights, Culture and Context: Anthropological Perspectives* (2nd pr, Pluto Press 1998) 23.

²⁸ De Feyter (n 4) 5.

2.3 The localising human rights framework

The localising human rights framework was developed in response to the above-mentioned concerns regarding globalisation and is an example of a theory that combines universalist principals with those based in cultural relativism. The framework upholds universalist notions in as far as its acceptance of the concept of human rights and the current systems of protection in place, whilst insisting that an injection from below is required in order to ensure effective protection and foster widespread legitimacy.

De Feyter elaborates a strategic analytical and methodological framework, which promotes bottom-up normative developments through interaction between the local and the global²⁹. Within this context, ‘localisation implies taking the human rights needs as formulated by local people (in response to the impact of economic globalization on their lives) as the starting point both for the further interpretation and elaboration of human rights norms, and for the development of human rights action, at all levels ranging from the domestic to the global’³⁰. As explained by Gaby Oré Aguilar:

‘Until now, human rights debates have largely focused on the universality vs. relativism dilemma when addressing the relationship between human rights and local contexts. While scholars and activists have actively engaged in promoting a greater understanding of the universal value of human rights principles, less attention has been paid to ... examining how these rights become relevant to the most excluded individuals’.

Focusing on such analysis however, is one of the aims of the localising human rights framework in order ‘to enhance the protection of individuals and communities from the negative effects of global socio-economic trends’³¹.

²⁹ Gaby Oré Aguilar, ‘The Local Relevance of Human Rights: A Methodological Approach’ [2008] DEAS Working Paper Series from RePEc 8.

³⁰ De Feyter (n 4) 5.

³¹ Oré Aguilar (n 29) 8.

As mentioned previously, the core concepts behind normative human rights, along with the mechanisms in place to ensure their protection, are not challenged within this framework. De Feyter does however, acknowledge that the UDHR, which forms the basis upon which the current system in place was founded, was a response to specific historical circumstances which profoundly influenced its content and the mechanisms created respectively. He goes on to explain that ‘circumstances change, and so must human rights’ however, ‘the proposal is to build upon what exists, rather than to start from afresh’³². The theory that the framework follows is that human rights, in their interpretation and implementation can be perceived as a fluid concept and consequently, ‘rather than seeing universalism and cultural relativism as alternatives which one must choose, ... one should see the tension between the positions as part of the continuous process of negotiating ever-changing and interrelated global and local norms’³³. The belief is that if consequently, such negotiation is effectively conducted, it can contribute towards the legitimatisation of human rights.

Although an in-depth analysis falls outside the scope of this thesis, it is relevant to touch upon the perceived legitimacy of the current global human rights system and how the above-mentioned approaches may influence this. Various authors highlight that local relevance is essential for the legitimacy of human rights to be established as global norms. Mutua argues that: ‘only by locating the basis for the cultural legitimacy of certain human rights and mobilising social forces on that score can respect for universal standards be forged’³⁴. This is also linked with the ‘Habermas’ discourse principle which dictates that norms become valid ‘when all possibly affected persons agree to them as part of rational discourse’³⁵. Such theories are based upon the presumption that in different parts of the world, and within different parts of the same society, people suffer from distinctive problems that are linked to their situation which are viewed from their specific perspective and, as a result, they form different human rights demands. Consequently, in order to effectively protect human

³² De Feyter (n 4) 7.

³³ Jane K Cowan, Marie-Bénédicte Dembour and Richard Wilson (eds), *Culture and Rights: Anthropological Perspectives* (Cambridge University Press 2001) 6.

³⁴ Makau Mutua, *Human Rights: A Political and Cultural Critique* (Univ of Pennsylvania Pr 2008) 81. As cited in Koen De Feyter, ‘Localizing Human Rights’ [2006] IDEAS Working Paper Series from RePEc 9

³⁵ Jürgen Habermas and William Rehg, *Between Facts and Norms: Contributions to a Discourse Theory of Law and Democracy* (Polity Press 2015) 107. As cited in Koen De Feyter, ‘Localizing Human Rights’ [2006] IDEAS Working Paper Series from RePEc 9

rights and give legitimacy to the system, such nuances must be considered³⁶. The concept of legitimacy can be extended from widespread acceptance, to the shaping of society itself in a way that is favourable to the upholding of human rights. As Anthropologist Sally Engle Merry states:

‘If human rights ideas are to have an impact, they need to become part of the consciousness of ordinary people around the world. Considerable research on law and everyday social life shows that law’s power to shape society depends not on punishment alone but on becoming embedded in everyday social practices shaping the rules people carry in their heads’³⁷.

The concept that human rights can only truly have an extensive impact when they are relevant to specific situations, to particular communities, expressed in a language that is understood so that they can be owned, believed in and shaped by rights holders, is further explored by Merry in her theory of the ‘vernacularisation’ of human rights.

2.5 The ‘vernacularisation’ of human rights

To further legitimisation, Merry explores the concept of translating human rights into the ‘vernacular’, a language understood by all, as a way of ‘negotiating the interface between globally produced human rights concepts and local grievances’³⁸. This very much abides by the universalist philosophy of retaining the fundamental concepts and the current structures of the global human rights regime whilst relying on the culturally relevant tailoring of these existing norms to make rights relevant within local contexts of power and meaning. Within this framework, intermediaries such as NGOs are given the role of the translators between the global and local. In practice there are many examples, including the cases that will be analysed, that one could argue have adopted such a practice. This is demonstrated by the reinterpretation at a global level of existing rights in accordance with the input that rights holders have

³⁶ Bonny Ibhawoh, ‘Restraining Universalism: Africanist Perspectives on Cultural Relativism in the Human Rights Discourse’, *Human rights, the rule of law, and development in Africa* (University of Pennsylvania Press 2004) 28.

³⁷ Merry (n 12) 3.

³⁸ *ibid* 217.

provided ensuing development from the bottom up.

It is at this stage that one can question how effective this exchange between the local and the global has been in regard the impact of human rights claims. As noted by De Feyter, when an abuse that occurs at local level forces engagement by rights holders at global level, ‘it is at this time that the efficacy of mechanisms of protection is tested. It is at the local level that having human rights either proves vital or illusory’,³⁹ and where the impact of this bottom-up injection is trialled. There is a lack of research into this relationship between the local and the global and in particular the effectiveness of the impact that input from this exchange has on protecting human rights and tackling violations. In order to further research the concept, a methodological framework was created by Oré Aguilar to facilitate case study research projects to ‘explore, record and analyse the localisation process and its translation into a valid resource for further human rights interpretation and elaboration’⁴⁰. The fieldwork carried out in this thesis fits into this broader methodology which will be further elaborated upon in Chapter 3.

2.6 The scope for the practical application of an exchange between the local and the global and some current examples

Importantly for the transformation of such a framework into something tangible, there is a strong case to suggest that the practical application of such exchanges between the local and the global is not outside of the scope of the current system in place, as will be further explored in subsequent section. As De Feyter states ‘the human rights regime is well advised to accommodate plurality, in order to address local human rights challenges more effectively’⁴¹. The increasing trend of cultural diversity and legal pluralism prevailing in the global South further demonstrates that rather than threatening the universal concept of human rights, such developments can in fact be an enriching input for it as noted by Gómez⁴².

³⁹ De Feyter (n 4) 12.

⁴⁰ Oré Aguilar (n 29) 10.

⁴¹ De Feyter (n 4) 11.

⁴² Gómez Isa (n 2) 1.

Various global mechanisms are beginning to adopt such an approach in order to effectively target problems faced on the ground, perhaps best demonstrated by some of the regional human rights protection mechanisms. Subsequently, some examples of the progress that has been made in this regard will be analysed in relation to the advancements made by the IACtHR. However, it is important to briefly note some steps taken by other regional mechanism. The recent case adjudicated by the African Court of Human and Peoples Rights (hereafter ACtHPR), regarding the Ogiek indigenous community of Kenya⁴³ was the ACtHPR's first indigenous rights case. A similar approach to that of the IACtHR was adopted in the ACtHPR's interpretation of the African Charter on Human and Peoples' Rights, in its consideration of local contexts and cultural nuances in relation to Article 14, the right to property. This demonstrates a promising move towards the adoption of such progressive jurisprudence by the mechanism.

Furthermore, the concept of the margin of appreciation used by the European Court of Human Rights (hereafter ECtHR) can also be viewed as a mechanism designed to allow substantial space for considerations of cultural diversity and local relevance to influence States' interpretation and implementation of rights at national level within a universalist system. However, to date the use by State's of this freedom and the ECtHR's consideration of proportionality has in many cases allowed for a lesser consideration of local nuances, particularly in regard to national minorities. To take one significant example, the ECtHR's case law history regarding the right of freedom of religion and demonstration of religious symbols clearly demonstrates that largely, the margin of appreciation has provided support to decisions made in accordance with the dominant culture, rather than having the effect of opening up an inter-cultural dialogue⁴⁴. In the context of this thesis it will not be possible to offer an extensive analysis of this however, it is significant to note. Further analysis can be found in Eva Brems book 'Human Rights: Universality and Diversity'⁴⁵.

⁴³ *The African Commission on Human and Peoples' Rights v Republic of Kenya* [2017] African Court on Human and Peoples' Rights 006/2012.

⁴⁴ 'Freedom of Religion and Religious Symbols: Same Right – Different Interpretation?' <<https://www.ejiltalk.org/freedom-of-religion-and-religious-symbols-same-right-different-interpretation/>> accessed 26 March 2018.

⁴⁵ Brems (n 20).

Chapter 3
An Analysis of the Case Law of the Inter-American Court of Human Rights
Interpretation of the Right to Property

3.1 A Focus on indigenous peoples lands rights cases

As has been previously discussed, in order to provide cross-cultural legitimacy to the universal human rights corpus, the particularities of each society must be drawn upon as ‘if the global human rights discourse wishes to be relevant on a local level, it needs to be open to a reasonable accommodation of the plurality inherent in local contexts such as the indigenous one’⁴⁶. As such, ‘there is no contradiction between maintaining human rights as a global language and allowing for variations in content in order to make human rights protection as locally relevant as possible’⁴⁷. The IACtHR’s jurisprudence has evolved in the last two decades to make it one of the key examples of the above being applied at regional level.

In order to demonstrate this evolution, the following section will analyse the progressive interpretation of Article 21, the right to property, of the American Convention of Human Rights (hereafter the Convention). The decision to focus on the case law of the IACtHR and particularly on indigenous peoples rights, was made as such cases clearly demonstrate the tension between the local and the global at the core of the human rights violations in question. As noted by Gómez, the case of indigenous peoples rights is particularly demonstrative as:

‘the multiculturalism that indigenous peoples advocate in addressing human rights clearly challenges a form of human rights that has so far been essentially monocultural. Indigenous peoples do not want to maintain their role as mere objects for protection in terms of existing human rights; rather, they want to see the same concept of human rights enhanced by indigenous worldviews’⁴⁸.

⁴⁶ Gómez Isa (n 2) 734.

⁴⁷ De Feyter (n 4) 9.

⁴⁸ Felipe Gómez Isa, ‘The Decision by the Inter-American Court of Human Rights on the *Awás Tingni vs. Nicaragua* Case (2001): The Implementation Gap’ [2017] *The Age of Human Rights Journal* 67, 1.

It is interesting to observe how the indigenous movement has appropriated the language of human rights when articulating local claims to some success. By using the terminology found in the conceptual localising human rights framework, one could interpret that indigenous peoples have ‘localised’ global standards to address their main concerns and similarly one could view the jurisprudence of the IACtHR as bringing the local to the global.

The decision to focus on the right to property was made for two principal reasons. Firstly, the perception that indigenous peoples have regarding the meaning of the right to property differs from that traditionally protected by the law. These contrasting views directly impact their rights claims and hold particular importance when such rights are violated. Furthermore, in the context of the evolution of the Court’s jurisprudence, its interpretation of the concept of private property over the last two decades has proven of great importance in the region⁴⁹. An analysis of the relevant case law, principally focusing on the following cases: *Case of the Mayagna (Sumo) Awas Tingni Community v. Nicaragua*, *Case of the Yakye Axa Indigenous Community v. Paraguay*, *Case of the Sawhoyamaya Indigenous Community v. Paraguay*, *Case of the Xákmok Kásek Indigenous Community v. Paraguay* and *Case of the Kichwa Indigenous People of Sarayaku v. Ecuador*, demonstrates the progressive move by the IACtHR towards the consideration of cultural diversity as an ‘essential request to secure the efficacy of the norms of protection of human rights, at national and international levels’⁵⁰. The result of this progressive interpretation of the Convention has resulted in ‘a kind of *indigenisation* of the right to property by the Inter-American Court’⁵¹, which the subsequent analysis will explore.

3.2 A confirmation of the universality of human rights

In reference to the previously discussed challenge of reconciling universalism and

⁴⁹ Rosmerlin Estupiñan-Silva, ‘Pueblos Indígenas y Tribales: La Construcción de Contenidos Culturales Inherentes En La Jurisprudencia Interamericana de Derechos Humanos’ (2014) 14 Anuario mexicano de derecho internacional 581, 601.

⁵⁰ Gómez Isa (n 2) 737.

⁵¹ Gómez Isa (n 48) 2.

cultural relativism, it should be noted that the IACtHR is clear about its position in the context of this debate. As stated initially in the historic *Mayagna (Sumo) Awas Tigni Community* (hereafter *Awas Tigni*) v. Nicaragua case and reiterated thereafter:

*‘The invocation of cultural manifestations cannot attempt against the universally recognised standards of observance and respect for the fundamental rights of the human person. Thus, at the same time that we affirm the importance of the attention due to cultural diversity . . . we firmly discard the distortions of the so-called cultural “relativism”’*⁵².

It can be argued that this outright rejection of the concept of cultural relativism is due to the politicization of the debate at this time, as one can argue that the Court does in fact adopt a form of cultural relativism. Further deliberation on this matter is outside of the scope of this work however, it is important to note is the language used, ‘cultural diversity’ in preference over ‘cultural relativism’. It is evident that from the Court’s perspective, ‘the door is open to cultural diversity but the scope of that diversity cannot be absolute given that it has certain limits which derive from fundamental human rights norms’⁵³. Furthermore, similarly to the localisation framework, the IACtHR makes clear in its judgments that it is not in fact challenging the system in place or creating new obligations for States, alternatively, it is following the logical evolution of conventional rights in order to guaranty their effectiveness in multi-cultural contexts. This can be seen across these cases and has resulted in the enrichment of the content of those rights interpreted, as well as the identification of State’s positive multicultural obligations⁵⁴.

3.3 Human rights treaties as live instruments

In order to further explore this evolution, it is necessary to begin by mentioning the *Awas Tigni* case, which set a historical precedent in regard to the development of the right of indigenous peoples to their land and natural resources. It is here that the Court

⁵² *Case of the Mayagna (Sumo) Awas Tingni Community v Nicaragua* (The Inter-American Court of Human Rights) Opinion of AA Cançado Trindade, M Pacheco Gómez and A Abreu Burelli, para 14.

⁵³ Gómez Isa (n 2) 737.

⁵⁴ Estupiñan-Silva (n 49) 603.

made its first step in the reinterpretation of the Convention, an approach which has been further developed in following judgements. The IACtHR clearly demonstrated its openness to viewing human rights as a fluid concept, open for development and interpretation. Affirmed in the *Awas Tingni* case and repeated regularly in subsequent sentences, the Court states that, ‘such human rights treaties are live instruments whose interpretation must adapt to the evolution of the times and, specifically, to current living conditions’⁵⁵. It is noted that said considerations are consistent with the general rules of interpretation embodied in Article 29 (b) of the Convention, which precludes restrictive interpretation of rights, as well as those set forth in the Vienna Convention on Treaty Law regarding the restrictions of interpretations of the articles. This opinion, further justified by the application of the above legal instruments, formed the basis for the Court’s analysis of the violations in these cases⁵⁶.

Additionally, the Court decided to follow ‘what it called an ‘evolutionary’ interpretation method, opening the door to the use of regulatory developments on human rights produced in other contexts outside that of the Inter-American System. This enabled the Court to overcome purely formalistic criteria in its interpretation of the meaning, nature and scope of the right of indigenous peoples to the ownership of their lands and natural resources’⁵⁷. This allowed it to draw upon the relevant judicial developments to inform its decision in order to react to the challenge of ‘developing new concepts and new norms which, without in any way damaging or curtailing the individual’s human rights, are able to enrich the way of life of indigenous peoples by recognizing the social and cultural reality in which those rights are breached’⁵⁸.

3.4 The concept of use and enjoyment

A further factor that contributed towards the widening scope of Article 21 in the

⁵⁵ *Case of the Mayagna (Sumo) Awas Tingni Community v. Nicaragua* (n 52) para.146.

⁵⁶ See *Case of the Mayagna (Sumo) Awas Tingni Community v Nicaragua para 147*, *Case of the Sawhoyamaya Indigenous Community v Paraguay para 117*, *Case of the Xákmok Kásek Indigenous Community v Paraguay para 17* and *Case of the Kichwa Indigenous People of Sarayaku v Ecuador para 161*.

⁵⁷ Gómez Isa (n 48) 24–5.

⁵⁸ *Case of the Mayagna (Sumo) Awas Tingni Community v. Nicaragua* (n 52) Expert opinion of Rodolfo Stavenhagen Gruenbaum, anthropologist and sociologist. 26.

Awás Tigni case, was the Court's deliberation of the travaux préparatoires of the Convention, in which the evolution of the phrasing of this article can be traced. Initially, Article 21 referred specifically to the concept of private property however, this was amended and the wording that was agreed reads as follows, 'everyone has the right to the use and enjoyment of [one's] property'⁵⁹. This omission of the concept of private property and the wording finally decided upon suggest an effort to accommodate the range of peoples that were to be protected by the Convention⁶⁰. As the IACtHR acknowledges, there is no idiosyncratic version of the concepts of the 'use and enjoyment' of property and consequently, that the indigenous notion is not in accordance with more classical perceptions, does not provide justification for the violation of this right. Throughout the case law covering such violations it is stated that 'disregard for specific versions of use and enjoyment of property, springing from the culture, uses, customs, and beliefs of each people, would be tantamount to holding that there is only one way of using and disposing of property, which, in turn, would render protection under Article 21 of the Convention illusory for millions of persons'⁶¹. This is a clear acknowledgment of the necessity to consider local perceptions when interpreting and implementing rights.

3.5 The right to property from the perspective of indigenous peoples

At this stage, the elements that the Court considered relevant in regard to the diverse meaning of property for indigenous peoples will be analysed. One of the most innovative aspects of this jurisprudence is the Court's interpretation of the right to property based on indigenous communities' worldview. As the Court notes:

'the culture of the members of the indigenous communities directly relates to a specific way of being, seeing, and acting in the world, developed on the basis of their

⁵⁹ 'Organization of American States (OAS), American Convention on Human Rights, "Pact of San José"' (Inter-American 1969) 8 <http://www.oas.org/dil/treaties_B-32_American_Convention_on_Human_Rights.pdf> accessed 17 February 2018.

⁶⁰ *Concurring opinion of Judge Sergio García Ramírez para 13 in Case of the Mayagna (Sumo) Awás Tingni Community v Nicaragua.*

⁶¹ *Case of the Sawhoyamaya Indigenous Community v Paraguay para 120 and Case of the Kichwa Indigenous People of Sarayaku v Ecuador para 145 See also Concurring opinion of Judge Sergio García Ramírez para 14 in Case of the Mayagna (Sumo) Awás Tingni Community v Nicaragua and Case of the Xákmok Kásek Indigenous Community v Paraguay para 87.*

*close relationship with their traditional territories and the resources therein, not only because they are their main means of subsistence, but also because they are part of their worldview, their religiosity, and therefore, of their cultural identity*⁶².

This is directly linked by the Court to the provision established in Article 13 of the ILO Convention No. 169, which declares that the States must respect ‘the special importance for the cultures and spiritual values of the peoples concerned of their relationship with the lands or territories, or both as applicable, which they occupy or otherwise use, and in particular the collective aspects of this relationship’⁶³.

This is further developed as the Court goes on to specify that as a consequence of such views the preservation of the cultural identity, heritage and as a result the very survival of indigenous communities, is dependent on the protection of their lands. It highlights that the connection between territory and natural resources for indigenous people ‘is necessary for their physical and cultural survival and the development and continuation of their worldview’. If they are to ‘continue living their traditional lifestyle, and so that their cultural identity, social structure, economic system, customs, beliefs and traditions’ are preserved, their right to property must be secured by States. It stresses that indigenous communities’ physical survival is also linked directly to access to their lands as the denial of their ability to uphold traditional sustenance practices and medicinal systems exposes communities to poor living conditions, as can be seen in various of the cases selected⁶⁴.

3.6 The collective right to property

An additional element that must be analysed in this context is the interpretation of the communal aspect of the right to property, a key element from the cultural perspective

⁶² *Case of the Mayagna (Sumo) Awas Tingni Community v. Nicaragua* (n 52). para 135.

⁶³ *Concurring opinion of Judge Sergio García Ramírez para 14 in Case of the Mayagna (Sumo) Awas Tingni Community v Nicaragua, Case of the Yakye Axa Indigenous Community v Paraguay para 136, Case of the Sawhoyamaxa Indigenous Community v Paraguay para 119.*

⁶⁴ *See Case of the Sawhoyamaxa Indigenous Community v Paraguay paras 145, 181, Case of the Xákmok Kásek Indigenous Community v Paraguay para 282 and Case of the Kichwa Indigenous People of Sarayaku v Ecuador para 233.*

of indigenous peoples. To begin with, the IACtHR approaches the concept of collective rights in a more general sense in the *Awas Tingni* case by noting the following:

*'In certain historical contexts, the rights of the human being can only be ensured and fully exercised if there is a recognition of the rights of the collectivity and of the community to which this person has belonged since he or she was born and of which he or she is a part, and which gives him or her all the necessary elements for a feeling of complete realization as a human being, which also means a social and cultural being. The counterpart to this statement is that, by violating the rights of a community to continue to subsist as such and to its reproduction as a unit and identity, a number of basic human rights are violated: the right to culture, to participation, to identity, to survival; this has been shown in a large number of studies on indigenous peoples and communities in Latin America'*⁶⁵.

This conviction is applied widely in its case law as justification for the support of indigenous communities' belief of a communal concept of land, including as a spiritual place, in comparison to adopting the conventional approach centred around the individual⁶⁶. As explained by an indigenous community member in their testimony, 'the lands are occupied and utilized by the entire Community. Nobody owns the land individually; the land's resources are collective'⁶⁷. The collective value given to the right to property, established in *Awas Tingni*, due to its cultural dimension is then adopted systematically in the cases that followed further establishing this jurisprudential norm⁶⁸. As Judge Sergio García Ramírez states in his concurring opinion, 'individual subjective rights flow from and are protected by these community rights, which are an essential part of the juridical culture of many indigenous peoples. In short, there is an intimate and inextricable link between

⁶⁵ *Case of the Mayagna (Sumo) Awas Tingni Community v. Nicaragua* (n 52) [15].

⁶⁶ Mauricio Iván Toro Huerta, 'Los Aportes de La Jurisprudencia de La Corte Interamericana de Derechos Humanos En La Configuración Del Derecho de Propiedad Colectiva de Los Miembros de Comunidades y Pueblos Indígenas' [2008] SELA (Seminario en Latinoamérica de Teoría Constitucional y Política) Papers 8–9 <http://digitalcommons.law.yale.edu/yls_sela/58> accessed 26 April 2018.

⁶⁷ *Case of the Mayagna (Sumo) Awas Tingni Community v. Nicaragua* (n 52) 18.

⁶⁸ Estupiñan-Silva (n 49) 603. See also *See also Case of the Mayagna (Sumo) Awas Tingni Community v. Nicaragua paras. 140, Case of the Sawhoyamaxa Indigenous Community v. Paraguay para. 120, Case of the Xákmok Kásek Indigenous Community v. Paraguay paras. 85-87 and Case of the Kichwa Indigenous People of Sarayaku v. Ecuador paras. 145-146, 155*

individual and collective rights, a linkage that is a condition *sine quae non* for genuine protection of persons belonging to indigenous ethnic groups⁶⁹.

3.7 Concluding remarks

As has been demonstrated, beginning with the *Awás Tingni* case, over the last two decades the IACtHR has developed an integral interpretation of the right to property by considering the indigenous cosmivision at the core of its progressive jurisprudence. It has recognised repeatedly that the relationship indigenous people have with their territory is not simply related to possession and production, but that it holds a spiritual element and is intrinsically linked with their culture in a way that is essential for the survival of such communities. This ‘so-called *multicultural jurisprudence* is paving the way for a more inclusive conception of human rights, a conception enriched by local ways of framing and understanding human dignity⁷⁰. Its decisions are paralleled by those of States in the region who are guided by the evolution and strengthening of the Courts interpretation of human rights from a perspective that is sensitive to indigenous culture⁷¹. It is critical to note the importance of this advancement however, minimal research has been conducted regarding the impact this has had on claims that are characterized by local nuances. This is the point of departure from which the research questions in this investigation were developed, as further explored in the subsequent chapter.

⁶⁹ *Concurring opinion of Judge Sergio García Ramírez para 14 in Case of the Mayagna (Sumo) Awás Tingni Community v Nicaragua See also Case of the Mayagna (Sumo) Awás Tingni Community v Nicaragua para 149, Case of the Yakye Axa Indigenous Community v Paraguay para 140, Case of the Sawhoyamaxa Indigenous Community v Paraguay para 118, Case of the Xákmok Kásek Indigenous Community v Paraguay para 86101 and Case of the Kichwa Indigenous People of Sarayaku v Ecuador para 90.*

⁷⁰ Gómez Isa (n 2) 724.

⁷¹ Rafael Garrido, *La reparación en clave de diversidad cultural: un desafío para la Corte Interamericana de Derechos Humanos* (1. ed, Univ Andina Simón Bolívar, Ecuador [u.a] 2013) 45.

Chapter 4

Research Methodology

This chapter will discuss the methodology behind the investigative fieldwork carried out as part of this thesis with the aim of providing transparency about the methods used and including both justifications and evaluations of the decisions made throughout the investigation.

This thesis combines literary research, case law analysis and fieldwork in the context of a case study analysis. The methodology developed draws inspiration from that created by Gaby Oré Aguilar in order to translate the conceptual approach of the localising human rights framework into practice. Originally designed to support a group of researchers and advocates led by the University of Antwerp in the implementation of a series of case studies⁷². As detailed in Chapter 1, this research will focus on the perspectives of the main actors involved. Consequently, qualitative over quantitative research was chosen as the method of interpretation due to its effectiveness in achieving the goal of ‘understanding social life from the perspective of those experiencing it’⁷³ and ‘accounting for how individuals experience and make meaning from their lived reality’⁷⁴.

4.1 Methods of data collection

Fieldwork was conducted during a trip to Paraguay between the 22nd May and 12th of June 2018. A total of five days were spent with the Sawhoyamaya Community during which eight formal interviews and two focus groups were conducted, along with various informal conversations. Translation was facilitated by Eriberto Ayala, a community leader. A further five interviews were conducted with relevant actors in Asunción.

⁷² Oré Aguilar (n 29) 9.

⁷³ Sharlene Nagy Hesse-Biber and Patricia Leavy (eds), *Approaches to Qualitative Research: A Reader on Theory and Practice* (Oxford University Press 2004) 181.

⁷⁴ *ibid* 52.

4.2 Rationale for a case study

The use of case study as a methodology for this research corresponds to the need created by the research questions formulated to undertake ‘an in-depth exploration from multiple perspectives of the complexity and uniqueness’ of a process ‘in a real life context’⁷⁵. It is this necessity to explore a phenomena in the context in which it occurs that makes a case study an appropriate choice⁷⁶.

4.3 Case selection

Following the analysis of relevant cases, in Chapter 3, the Sawhoyamaxa case was selected due to its fulfilment of the case study criteria (see Annex 1) detailed in the methodology developed for the localisation of human right framework as demonstrated below⁷⁷.

- *‘The case represents a wider problem experienced by other local communities’*

There is a widespread problem regarding indigenous communities land rights in the region and more specifically in Paraguay where violations of the same typology are systematically committed by the State.

- *‘The problem presented is a (direct or indirect) consequence of economic globalization’*

The commercialized agriculture focused on international exportation in the Paraguayan Chaco that has had a direct influence on the ability of indigenous communities in the area reclaiming their ancestral lands. This will be detailed further in Chapter 5.

- *‘The affected local community is involved in the human rights claim’*

⁷⁵ Helen Simons, *Case Study Research in Practice* (SAGE 2009) 21.

⁷⁶ Robert K Yin, *Case Study Research: Design and Methods* (4th ed, Sage Publications 2009) 4.

⁷⁷ Oré Aguilar (n 29).

The Sawhoyamaxa Community initiated the struggle to reclaim their lands independently, as will be seen in the following chapter, and continued to be closely involved throughout the subsequent claims.

- *‘There is a presence of NGOs and international actors*

The local NGO TierraViva a los Pueblos Indígenas del Chaco (hereinafter TierraViva) represented the Community in front of the Inter-American system. In addition to the IACtHR, international actors present included various International NGOs which participated in the advocacy strategy adopted for this case.

Furthermore, Latin America is a ‘region particularly affected by economic globalisation’ and ‘sufficient political space exists’ in order to carry out an investigation into this claim which was ‘formulated in human rights terms’. Demonstrating that this case adheres to all the methodologies case study criteria. Additionally, another important factor is that sufficient time has passed to allow the investigation to consider the consequences that resettlement has had on the variables developed. Consequently, the case can be considered as both a resolved claim following the judgement, as well as an ongoing claim, due to the incomplete implementation of the reparations ordered by the Court. A further element considered is that a study with such a focus has not been conducted in regard to the Sawhoyamaxa case, adding to the investigation’s value as a piece of research within this area.

4.4 Multi-method design

The decision was made to use focus groups as well as interviews in order to collect the necessary data to address the research questions posed.

4.5 Focus groups

Focus groups were chosen as a method of data collection within the Community for the following reasons. They allowed the inclusion of ‘larger populations that may not have been available for in-depth interviews’⁷⁸ providing a wider scope of perspectives in the initial phase. Consequently, it enabled the testing of the identified variables and one-to-one interviews could then focus on these areas. As ‘by following up with in-depth interviews, the researcher is able to go back and gain more data where needed to best answer the research question’⁷⁹. Initially three focus groups were planned to obtain a range of different perspectives. One with the older generation with members that remembered being in the Community’s lands, another with the younger generation and a final group with women in order to ensure a gender sensitive approach. An additional intention behind these groups was the dual effect of facilitating the identification of potential participants for one-on-one interviews, as well as allowing Community members who were interested in contributing to come forward.

4.5.1 Reflections

Due to the limited exchange with contacts on the ground prior to arrival, the planning of the focus groups did not consider that the Community is arranged in traditionally family based bands living in different settlements located across their territory. The logistics of moving people from one settlement to another, as well as time limitations, made it impossible to arrange the three separate homogenous focus groups described previously. Following consultation with some of the leaders of Sawhoyamaya, it was decided for practical reasons that two focus groups would be held in the hosting settlement and that located nearest to it. Furthermore, it became clear that due to the absence of men due to work commitments, the groups would constitute solely of women. Further reflection upon the samples collected will follow in section 4.12.4.

⁷⁸ Hesse-Biber and Leavy (n 73) 177.

⁷⁹ *ibid.*

In practice, the first focus group was made up of 12 women from the 16 de agosto settlement. The group was larger than the ideal number for a focus group, four to eight participants however, the idea was to be introduced to the women in the Community with the intentions discussed previously⁸⁰. Although such a large group is not advisable, risking a less dynamic space and making moderating more challenging, the data collected was valuable and a follow up interviews were arranged as a result. The second group was a smaller group of seven women which allowed for more interactions between members. It was interesting to note a similar dynamic in both focus groups. The majority of the participants remained timid and apprehensive until between 45 minutes to an hour had passed, at which point the mood changed. At this point some jokes had been exchanged, which was key to creating a more relaxed environment and more participants, particularly those belonging to the younger generation, began to contribute.

4.5.2 Focus groups as semi-structured

The decision was made to use a semi-structured format in line with the belief that ‘focus group interviews conducted in an open format allow participants to help shape the topic in ways that are meaningful to them’⁸¹. This leads to participants shaping the emerging narrative and identifying key themes with the aim of ensuring that ‘any theories about what is significant to the population develop inductively through data collection and are not merely constructed by the researcher’⁸². Although the guide produced for interviews, which will be further discussed subsequently, was used to test the variables proposed, a standardized approach with ‘identical questions and procedures ... in every group’⁸³ was not followed, to ensure that new themes emerged organically and the variables were modified accordingly.

⁸⁰ *ibid* 178.

⁸¹ *ibid* 181.

⁸² *ibid*.

⁸³ *ibid* 180.

4.6 Semi-structured interviews

Semi-structured interviews were decided upon as a method of data collection in order to record an accurate as possible reflection of the various actors' perspectives. Consequently an adaptive questioning technique was adopted, where 'questions are loosely sequenced and may be arranged or may change form in response to interviewee participation'⁸⁴. In this study, the purpose of the interview was not to test hypotheses but to understand 'the lived experience of other people and the meaning they make of that experience'⁸⁵ requiring 'intense listening, a respect for curiosity about what people say, and a systematic effort to really hear and understand what people'⁸⁶ share.

Consequently, a semi-structured format ensured that that data was not limited by a strict questioning scheme and that results were guided by the participants' views. 'Hopf (1978) warns against applying the interview guide too bureaucratically. This might restrict the benefits of openness and contextual information' this might also 'encourage him or her to interrupt the interviewee's accounts at the wrong moment in order to turn to the next question instead of taking the topic and trying to get deeper into it'⁸⁷. The decision not to interrupt interviewee will be discussed in section 4.12.2. Hopf's advice was followed in order to guarantee that the results were not merely constructed by the researcher but based firmly on the evidence collected and the guides were used loosely and adopted appropriately.

4.7 Interview guides

The interview guides (see Annex 2) were designed to produce data that would enable the answering of both the main and sub research questions, as well as expanding

⁸⁴ Steinar Kvale, *Interviews: An Introduction to Qualitative Research Interviewing* (Sage Publications 1996). cited in Audrey Trainor and Elizabeth Graue, *Reviewing Qualitative Research in the Social Sciences* (Routledge 2013) 126 <http://www.123library.org/book_details/?id=92871> accessed 12 July 2018.

⁸⁵ Irving Seidman, *Interviewing as Qualitative Research: A Guide for Researchers in Education and the Social Sciences* (3rd ed, Teachers College Press 2006) 9.

⁸⁶ Herbert J Rubin and Irene Rubin, *Qualitative Interviewing: The Art of Hearing Data* (3rd ed, SAGE 2012) 17.

⁸⁷ Uwe Flick, *An Introduction to Qualitative Research* (4. ed., repr, SAGE 2011) 171.

contextual knowledge surrounding the case. They also included pre-established, yet changeable, variables to be tested and expanded upon, as discussed. Questions and themes were added as they appeared as concepts developed during data collection. The guides also provided a basis for giving the interview a new turn ‘in the case of a stagnating conversation or an unproductive topic’⁸⁸.

4.8 Variables

The variables were based upon prior research regarding the elements that traditionally constituted the wider Enxet culture⁸⁹. They initially acted as a guide used to explore different themes and were amended during the data collection process, as well as at the point of analysis.

4.9 The selection of participants

In order to select participants, different methodologies were followed to identify participants in Sawhoyamaxa and actors external to the community. As defined in the research question, the focus on the collection of the perspective of relevant actors involved in the communities claim. Consequently, in regard to actors outside of the community, organisations that had played a role in the litigation of the case, supported advocacy strategies or covered the Community’s claim were identified and contacted. ‘Considering the theoretically unlimited possibilities of including further interviewees, it is necessary to define criteria regarding how promising the data collected by interviewing a particular person may be for the investigation’⁹⁰. As a result, a gradual integration strategy was followed and key actors were selected either due to their direct involvement with the case, the enforcement of the IACtHR’s sentence or their knowledge of the Community’s culture. It was also deemed important to ensure that the data collected included the perspectives of NGOs, the

⁸⁸ Andreas Witzel and Herwig Reiter, *The Problem-Centred Interview: Principles and Practice* (SAGE 2012). cited in Uwe Flick, *An Introduction to Qualitative Research* (4. ed., repr, SAGE 2011) 171

⁸⁹ The Sawhoyamaxa community belongs to the South Enxet ethnic group which traditionally shared similar cultural traits.

⁹⁰ Flick (n 87) 171.

government and that both legal and anthropological narratives were obtained. A list of interviewees can be found in Annex 4.

A gradual integration strategy was also employed in the community setting and due to time constraints and practical limitations due to weather conditions; a strategy of convenience sampling⁹¹ was employed. Considerations regarding the final sample of interviewees and the potential impact this had on the investigation is reflected in section 4.12.4.

4.10 Research ethics

The main elements considered for this investigation in relation to research ethics were as follows; the potential of causing harm, the protection of the dignity, welfare and rights of participants and the scientific quality of the work produced⁹².

To limit the risk of causing harm to the Sawhoyamaxa Community as a consequence of the investigation, discussions were held with the NGO that legally represents the community, TierraViva, and the Community's leaders. It was concluded that the topics being discussed were low risk considering the current circumstances.

In order to ensure that the dignity, welfare and rights of participants were safeguarded, a consent form was designed (see Annex 5) and the following criteria considered during consent gaining. As Allmark states, researchers should ensure that, 'the consent should be given by someone competent to do so', 'the person giving the consent should be adequately informed' and that 'the consent is given voluntarily'⁹³. The option of anonymity was included on the form, as although the topic being discussed was unlikely to put participants at risk, it was deemed necessary to include this choice. It was also made clear to participants that were illiterate or did not have a signature that it remained important to make a mark on the form to demonstrate that

⁹¹ Michael Quinn Patton and Michael Quinn Patton, *Qualitative Research and Evaluation Methods* (3 ed, Sage Publications 2002) 240–41.

⁹² Flick (n 87) 40.

⁹³ Peter Allmark, 'The Ethics of Research with Children' (2003) 10 *Nurse Researcher* 7, 13. as cited in Uwe Flick, *An Introduction to Qualitative Research* (4. ed., repr, SAGE 2011) 171

they had understood, and agree for the material obtained to be used in the way described. Consent was gained in person for all interviews aside from one where consent was confirmed over email. In two of the interviews confidential or sensitive information was discussed and the decision was made to omit these sections from the transcripts.

The final consideration to be made in regard to ethics is that ‘research which is only duplicating existing research, or which does not have the quality to contribute new knowledge to the existing knowledge can be seen as unethical’⁹⁴. Preliminary research confirmed that the investigation would contribute new knowledge.

4.11 Technical Application

The decision was made to employ a combined strategy of note-taking and recording. Reflections were always recorded before the end of the day that the interview was conducted and re-read at the point of transcription and analysis of the interviews. Field notes, in order to record personal impressions, informal conversation were also taken.

4.11.1 Transcription

Due to the focus of the research and considering factors such as translation and time limitations, the transcription methodology followed was that of denaturalized transcription, prioritising verbal speech and omitting ‘idiosyncratic speech elements, such as stutters, pauses, involuntary vocalizations, and non-verbal language’⁹⁵. This choice was made based on the belief ‘that most qualitative analyses do not benefit from a transcription that includes pauses, false starts, repeated sentences, interruptions, or encouragement, and advocate their exclusion’⁹⁶, and this study was

⁹⁴ Flick (n 87) 40.

⁹⁵ Vanessa Azevedo and others, ‘Interview Transcription: Conceptual Issues, Practical Guidelines, and Challenges’ (2017) IV Série Revista de Enfermagem Referência 159, 161.

⁹⁶ Margarete Sandelowski, ‘Focus on Qualitative Methods. Notes on Transcription’ (1994) 17 Research in Nursing & Health 311. As cited in Vanessa Azevedo and others, ‘Interview Transcription: Conceptual Issues, Practical Guidelines, and Challenges’ (2017) IV Série Revista de Enfermagem Referência 159, 162

deemed to fit into this category. The accuracy of the speech was not edited to improve readability, a decision employed throughout all transcriptions as the citations included in the analysis were translated into English.

4.11.2 Material sampling

A brief note regarding material sampling is necessary at this stage. Of the 12 formal interviews conducted 10 were fully transcribed. Due to time restraints and the lack of relevant material in the final two interviews, the decision was taken to exclude these. In those transcribed, on a few occasions side conversations deemed completely irrelevant to the investigation were omitted, as indicated in the transcripts.

4.11.3 Methods of analysis

A semi open coding method was adopted and codes were identified, guided by the variables developed during the fieldwork, by reading the transcripts. Tables were then formulated to facilitate analysis of each theme. The programme MAXQDA was used to code and create tables.

4.12 Limitations, challenges and reflections

4.12.1 Weather conditions and time limitations

As a consequence of the bad weather conditions encountered, the focus groups were conducted on the first day as planned however, the remaining eight interviews were conducted over just three days, with four interviews held on the last. Conducting four interviews in one day is not ideal due to the strain this puts on both the interviewer and translator and the lack of time for reflection between discussions. Although this consideration was made, the decision was made to continue due to time limitations.

4.12.2 Translation

It is necessary to comment on the experience of using a translator for all interviews and focus groups conducted in the Sawhoyamaxa Community with the expectation of one where the participants' Spanish language ability was deemed sufficient.

As expected, mediation through a translator in a focus group limits the control of the mediator to a certain extent. Although the ability to prompt, rephrase questions, open up the discussion remain, understanding the group dynamic is more problematic, as not every word could be translated. Whilst noting this limitation, it was felt that the data collected was valuable and feedback proved that the experience shared was viewed positively. It did not for example prevent various humorous exchanges between the researcher and the group, which helped to create a relaxed environment prompting further interactions both during the interview and in encounters that followed.

It was asked of every interviewee to consider the limitations of simultaneous translation when answering questions. However, perhaps due to the lack of experience using a translator and as interviewees were often recalling distant memories and recounting experiences, participants would speak for long periods of time without pausing. This put pressure on the translator, who was not a professionally trained interpreter. It was clear that although a great effort was made to interpret as accurately as possible, often ideas were summarised.

Furthermore, due to the knowledge that the translator had in regard to human rights, advocacy and law, concepts were often framed unintentionally in language that may not have been necessarily used by participants. A discussion was held with the translator following the first interview however, the decision was made not to interrupt participants to facilitate more accurate translation for the following reasons. Time restraints meant that the relationship between interviewer and interviewee was non-existent prior to interview and how comfortable the participant felt risked being damaged by interruption. Furthermore, the information being recalled was sometimes in the distant past and consequently participants required time to recall such memories. Consequently, the risk of impacting the quality of data collected and affecting the interview experience of the participant negatively as mentioned in section 4.6, was deemed greater than ensuring a more accurate translation.

4.12.3 The role of the translator

It is relevant to note that the translator and facilitator of the interviews was also a community leader. Without this support gaining access to the Community would not have been possible considering the time and resources available. It must also be noted that this greatly facilitated the possibility of approaching people for interviews without having to build prior relationships, which was essential due to time restrictions. It must be noted however, that speaking in front of a community leader could have an effect on the data collected. Nonetheless, given the topics discussed and the dynamics observed between both parties, it is not considered that this influenced the data significantly. Following feedback from participants post interview, it appears that creation of a space to discuss such topics was considered a positive exercise and the hope was that this may contribute towards further internal discussions surrounding cultural revival activities in the community.

4.12.4 The scope of the sample

The final sample of interviews collected in Sawhoyamaxa constituted mainly women, in particular older women and the only men interviewed were Community leaders. This occurred because the availability of men was limited due to work commitments. Older members of the Community had lived in the lands previously, allowing the analysis of the change in culture across all stages so these interviews were prioritised. Due to time restraints, it was not possible to obtain a more gender and age balanced sample.

4.18 Reflexivity

This section will focus on reflexivity, ‘the process of acknowledging, reflecting, and reporting, how one’s identities, beliefs, knowledge and relationships to people,

material, and concepts influence one's work'⁹⁷. In this investigation it is relevant to note that being a young, foreign, woman will have had an effect on the responses provided by those interviewed. Subject to the brief period passed in the community, there was not the time to observe further how these factors have influenced the data collection in depth however; it is necessary to note that they inevitably did. One observation that was noted however, was the highlighting of the governments lack of fulfilment of its obligations, which was often expressed without prompt. It was clear that the participants wanted to ensure that this was understood and hoped that this would be publicised.

Chapter 5

Contextual Analysis

This chapter provides a brief overview of the indigenous peoples rights situation in Paraguay, the history of the Sawhoyamaxa's land rights claim and a brief case analysis, with the aim of placing the Sawhoyamaxa case in context and allowing for a broader interpretation of the subsequent analysis.

5.1 Indigenous peoples in Paraguay

The most recent National Census of Indigenous Peoples in Paraguay conducted in 2012 showed there to be 115,944 people identifying as indigenous, making up around two per cent of the country's total population. The census identified 19 different indigenous groups belonging to the following '5 linguistic families: Guaraní (Aché, Avá Guaraní, Mbya Guaraní, Paĩ Tavytera, Guaraní Ñandeva, Guaraní Occidental), Maskoy (Toba Maskoy, Enlhet Norte, Enxet Sur, Sanapaná, Angaité, Guaná), Mataco

⁹⁷ Trainor and Graue (n 84) 130.

Mataguayo (Nivaclé, Maká, Manjui), Zambuco (Ayoreo, Yvytoso, Tomárahó) and Guaicurú (Qom)⁹⁸.

The indigenous population of Paraguay has been long subject to systematic discrimination by the State and non-indigenous society. Their marginalisation and the extreme inequality that separates them from the rest of population is evident when one observes that ‘the rates of poverty and extreme poverty among indigenous peoples are 75 per cent and 60 per cent, respectively thus far exceeding the national average’⁹⁹. Further statistics demonstrating the vulnerable situation faced by indigenous communities are that ‘among indigenous children under the age of 5, the rate of extreme poverty is 63 per cent (compared to the national average of 26 per cent), and the chronic malnutrition rate is 41.7 per cent (compared to 17.5 per cent)’¹⁰⁰. This is linked to the lack of basic services such as health care, education and access to housing and water showing the inadequate protection of indigenous social, economic and cultural rights by the State. It must be considered that:

‘The socioeconomic problems of the indigenous peoples of Paraguay cannot be separated from the socioeconomic circumstances of the country as a whole... there are a series of structural factors in Paraguay, including corruption, vast inequality, a regressive tax structure, the concentration of landownership and environmental degradation, which, combined with institutional weaknesses, hinder progress in alleviating poverty’¹⁰¹.

As explained by a government official interviewed as part of this study, in order to change the current situation, the government’s political agenda must change. What is needed is the implementation of state led initiatives as the Instituto Paraguayo del Indígena (the Paraguayan Indigenous Institute), the government institution in charge of indigenous affairs, ‘does not have the institutional or operational capacity due to its

⁹⁸ ‘End of Mission to Paraguay Statement: UN Special Rapporteur on the Rights of Indigenous Peoples, Victoria Tauli-Corpuz’ 3 <<http://unsr.vtaulicorpuz.org/site/index.php/en/statements/44-end-mission-to-paraguay>> accessed 14 July 2018.

⁹⁹ ‘Report of the Special Rapporteur on the Rights of Indigenous Peoples, Victoria Tauli-Corpuz. The Situation of Indigenous Peoples in Paraguay.’ (UN Human Rights Council 2015) A/HRC/30/41/Add1 13.

¹⁰⁰ *ibid.*

¹⁰¹ *ibid* 12.

size and lack inefficiency'¹⁰² to effectively protect indigenous peoples rights at national level. This adheres to the message sent to the State by the IACtHR in its sentence, that it lacks institutional mechanisms that have the ability to effectively respond to the need of Paraguay's indigenous communities. As noted by the UN Special Rapporteur on the rights of indigenous peoples (hereafter Special Rapporteur) 'Paraguay has a constitutional framework in which the rights of indigenous peoples are recognised. However, this normative framework has not been translated into the legislative, administrative or other measures needed to ensure the enjoyment by indigenous peoples of their human rights'¹⁰³.

It is necessary to consider such factors in order to ensure that the Sawhoymaxaxa case is viewed in this specific context rather than as an isolated example. It is particularly relevant when one deliberates that many of the problems faced by the Community are representative of those faced by a large proportion of Paraguayan society. This does not however, excuse the lack of responsibility assumed by the State to protect the indigenous populations' human rights, but merely highlights that the inadequate protection of such rights is often part of wider structural problems faced by the State. The Special Rapporteur in her recent State report published in 2015, highlighted the severity of the situation detailed above, declaring that 'the Government of Paraguay should regard this as an emergency situation'¹⁰⁴. This situation of marginalisation, poverty and exclusion faced by the Paraguayan indigenous population 'principally plays out through the invasion, destruction, and expulsion from their traditional lands and ancestral territories, where they live their lives and where their worldview, survival, and cultural practices are deeply rooted'¹⁰⁵.

Agricultural land is Paraguay's main source of wealth, it is 'the world's fourth-largest exporter of soybeans and sixth-largest exporter of beef. Booms in both commodities are driving macroeconomic growth. But these industries are concentrated in very few hands. Measured by land distribution, Paraguay is the most unequal society in South

¹⁰² 'Interview with Andrés Ramírez' (6 June 2018).

¹⁰³ 'Report of the Special Rapporteur on the Rights of Indigenous Peoples, Victoria Tauli-Corpuz. The Situation of Indigenous Peoples in Paraguay.' (n 99) 18.

¹⁰⁴ *ibid.*

¹⁰⁵ 'Paraguay' <<https://www.iwgia.org/en/paraguay>> accessed 6 January 2018.

America'¹⁰⁶. As one interviewee stated, as a consequence of the business model adopted by the government and fuelled by the increasing globalisation of the market, 'in Paraguay there is barely any public land, every square meter has an owner'¹⁰⁷. It is relevant to note that the vast majority of the indigenous population is rural, and consequently the country's history of land privatisation and subsequent agricultural expansion, has led to the forced displacement of many indigenous peoples from their ancestral territory. As the Special Rapporteur reported following her visit in 2014, in regard to indigenous people in Paraguay, the 'foremost concern remains the security of their right to their lands, territories and resources'¹⁰⁸. 'Nearly half of the indigenous communities do not have lands. And even when the lands have been titled to the communities, land security is not ensured'¹⁰⁹. Such challenges are faced by the indigenous peoples of the Paraguayan Chaco region which will be explored subsequently in specific regard to the case in question.

5.2 Historical context

In the Enxet language Sawhoyamaxa means 'from the place where the coconuts have run out' which identifies the area of land where the Sawhoyamaxa Indigenous Community traditionally lived to the west of the Paraguay River¹¹⁰ (see Annex 3). The Sawhoyamaxa Community belongs to the 'South Enxet and North Enhelt Lengua ethnic groups' which along with the 'Sanapaná, Toba, Angaité, Toba Maskoy, and Guaná communities, are part of the Maskoy Lengua (Enhelt-Enenlhet) linguistic family and have ancestrally occupied the Paraguayan Chaco'¹¹¹.

¹⁰⁶ 'Paraguay: An Unequal Land' (*New Internationalist*, 27 March 2018) <<https://newint.org/columns/country/2018-03-27/country-profile-paraguay>> accessed 6 February 2018.

¹⁰⁷ 'Interview with Oscar Ayala' (9 June 2018).

¹⁰⁸ 'Report of the Special Rapporteur on the Rights of Indigenous Peoples, Victoria Tauli-Corpuz. The Situation of Indigenous Peoples in Paraguay.' (n 99) 5.

¹⁰⁹ 'End of Mission to Paraguay Statement: UN Special Rapporteur on the Rights of Indigenous Peoples, Victoria Tauli-Corpuz' (n 98).

¹¹⁰ Cabello Julia, 'Comunidad Indígena Sawhoyamaxa: Historia de Lucha y Reivindicación Territorial En El Chaco Paraguayo' (Movimiento Regional Por La Tierra 2014) 1 <<http://www.porlatierra.org/docs/7de6f97752b32890cf0487fef710c62c.pdf>> accessed 2 September 2018.

¹¹¹ *Case of the Sawhoyamaxa Indigenous Community v Paraguay* (The Inter-American Court of Human Rights) 31–32.

The recent census ascertained that just under half of the country's indigenous population live in the Paraguayan Chaco region¹¹². Historically, similarly to the other indigenous peoples of the area, the Enxet people survived by foraging plants and fruit, fishing, hunting, keeping livestock and through small-scale horticultural practices. These ways of sourcing food depended on the seasons and the largely family based bands that formed the wider group moved around the expansive territory, responding to seasonal changes in a cyclical manner¹¹³. This way of living exclusively from the natural resources available, by 'moving from station to station'¹¹⁴ as different areas of the land were used to obtain different resources, was described by members of the Community during the field work conducted. The ability of entire groups to regularly change their location, enabling them to use resources rotationally was essential to remaining self-sufficient, as this flexibility was is key in adapting to the ever changing, challenging environment that is the Paraguay Chaco¹¹⁵. This freedom of movement was central to maintaining their way of life.

The Enxet remained isolated from the colonialism that occurred in the rest of the Americas 'as the Spaniards, and their successors the Paraguayans ... never managed to successfully invade the Chaco'¹¹⁶. However, at the end of the 19th century, large parts of the Paraguayan Chaco were sold on the London Stock Market. Within two years, the Enxet territory had been purchased without the knowledge of the communities living in it. The majority of the land was purchased by British entrepreneurs that persuaded the British Anglican Church's South American Missionary Society to establish a mission to pacify the Enxet people ensuring cheap labour for their planned agricultural activities¹¹⁷. Nevertheless, the colonisation of the Enxet was slow to begin with and it was not until the process of capitalist penetration began speeding up in the early 1900s when international cattle farmers began purchasing the land, that restrictions to their territory were felt by the Enxet

¹¹² 'Strategic Litigation Impacts Indigenous Peoples' Land Rights' (Open Society Justice Initiative 2017) 34.

¹¹³ Stephen William Kidd, 'Religious Case: A Case-Study amongst the Enxet of the Paraguayan Chaco' (Masters, Durham University 1992) 36 <<http://etheses.dur.ac.uk/6170/>> accessed 14 July 2018.

¹¹⁴ 'Participant from Focus Group 2' (31 May 2018).

¹¹⁵ *Case of the Sawhoyamaxa Indigenous Community v. Paraguay* (n 111) 18.

¹¹⁶ Kidd (n 112) 36.

¹¹⁷ Stephen William Kidd, 'Love and Hate among the People without Things : The Social and Economic Relations of the Enxet People of Paraguay' (Thesis, University of St Andrews 2000) 22 <<https://research-repository.st-andrews.ac.uk/handle/10023/7281>> accessed 14 July 2018.

people¹¹⁸. The occupation of their land over this period impacted the indigenous communities cyclical lifestyle resulting in the Community becoming sedentary. The increasing use of the land for commercial farming progressively restricted the Community's possibilities to access their territory and consequently their ability to remain self-sufficient, as the areas traditionally used for hunting, fishing and foraging were incrementally reduced. The last hunting ground reserves of the Enxet were fenced-off in at the beginning of 1940¹¹⁹. The privatisation of the land resulted in the Enxet's forced displacement and as their traditional means of survival were increasingly destroyed, the majority of the population was forced to take up work in the surrounding cattle ranches in an attempt to alleviate the situation of extreme poverty that they began to find themselves in. In the estates they were subject to exploitation, working under inhumane conditions, which severely violated the most basic of human rights. The Sawhoyamaxa Community followed the trend of other Enxet communities in the region, and consequently became separated as it dispersed between various estates.

5.3 Case summary

In the late 1980s and early 1990s, members of the Community began assembling and discussing 'how their ancestors used to live, and compared their ancestors' way of life with their own reality. They realized they were being displaced, and that many of them were living on the estates without education or medicines'. A movement began to form, with Community members visiting the various estates where their people had settled to foster support and unify the community. 'It was then that they joined efforts to demand "a place to live" from the Government'. Underpinning their claim for territorial restitution was the shared hope that 'in time, [they] would be able to recover [their] lands, [their] language, [their] health, [their] education and improve their standard of living'¹²⁰.

¹¹⁸ Kidd (n 112) 63–4.

¹¹⁹ *Case of the Sawhoyamaxa Indigenous Community v. Paraguay* (n 110) 18.

¹²⁰ *ibid* 8–9.

Sawhoyamaxa officially initiated its claim for the restitution of a section of its traditional territory in 1991, in accordance with the policy established in the Paraguayan Law 904/81, without success. The Community then filed for the legal expropriation of the land in question on the basis that ‘the devolution of land to indigenous peoples reflected broader societal interest as proclaimed under the Paraguayan multicultural policy and constitutional framework’¹²¹. In 1997, this request reached Congress however, as a consequence of the interests that a number of members of congress had with the powerful cattle businesses in the area, it was defeated. Following their initial claim for restitution, in protest of the inaction of the State, a large part of the Sawhoyamaxa Community left the estates where they had been living and settled around the 392 KM mark of the national road running from Pozo Colorado to Concepción alongside the fenced-off land that they were reclaiming. This placed the Community in a situation of extreme vulnerability and poverty, with no access to services, as they waited for the competent bodies to decide on their claim. The severity of the situation was recognised officially by the President of the Republic of Paraguay in June 1999 and the Sawhoyamaxa Community was declared to be in a state of emergency¹²². Following the failed attempts at national level, in 2001, the NGO TierraViva submitted a petition to the Inter-American Commission of Human Rights (hereafter the Commission) on the Community’s behalf. In 2005, the Commission filed an application before the IACtHR and in 2006; the Court found violations of the right to a fair trial and judicial protection, the right to property, the right to life, and the right to recognition as a person before the law.

5.4 The importance of culture in the Sawhoyamaxa case

‘If it had only been about the legal title to their land, these people would not have spent 20 years on the roadside’ - Oscar Ayala, TierraViva.

The progressive interpretation of Article 21 due to the IACtHR’s consideration of the indigenous peoples distinct perception of the right to property discussed in Chapter 4, was key in the Sawhoyamaxa case as demonstrated by the following extract.

¹²¹ ‘Strategic Litigation Impacts Indigenous Peoples’ Land Rights’ (n 111) 37.

¹²² *Case of the Sawhoyamaxa Indigenous Community v. Paraguay* (n 110) 48.

‘The Court finds that the special meaning that these lands have for indigenous peoples, in general, and for the members of the Sawhoyamaxa Community, in particular (supra para. 133), implies that the denial of those rights over land involves a detriment to values that are highly significant to the members of those communities, who are at risk of losing or suffering irreparable damage to their lives and identities, and to the cultural heritage of future generations’¹²³.

This is a clear example of the consideration of the local by a regional mechanism and an acknowledgement of its importance in ensuring the effective protection of indigenous groups. As one of TierraViva’s lawyers reflects ‘without the understanding of cultural element of the relationship indigenous people have with their land, it would have been impossible to develop the levels of protection that indigenous lands are given under the Convention’¹²⁴.

5.5 Reparations

The scope of this thesis does not allow for further analysis of the case, however, it is necessary to look at the reparations ordered by the Court due to their relevance in regard to their impact on the Community’s culture which will be explored during the planned fieldwork. The reparations ordered were as follows: the return of the 14,404 hectares of ancestral lands reclaimed by Sawhoyamaxa within a period of three years, the creation of a development fund to the sum of one million U.S dollars, the provision of compensation for non-pecuniary damage within one year in the form of the payment of 20,000 U.S dollars to the 19 families that had suffered a loss ‘as a result the failure by the State to comply with its preventive duty regarding their right to life’¹²⁵. Additionally, the provision of basic services whilst the Community remained by the roadside was ordered. During the period of time that the State was initially given by the Court to complete its obligations, a further eight children died

¹²³ *ibid* 100.

¹²⁴ ‘Interview with Oscar Ayala’ (n 106).

¹²⁵ *Case of the Sawhoyamaxa Indigenous Community v. Paraguay* (n 110) 90.

and the Sawhoyamaxa Community remained in a vulnerable and dangerous situation by the roadside.

After seven years of waiting in vain for the State to fulfil its obligations, in the early hours of the morning on the 21st March 2013, the Sawhoyamaxa Community illegally entered into the area denominated private property to reoccupy their lands. Julia Cabello, the lawyer at TierraViva that lead the case, explained the importance of the Community's decision. 'It was Sawhoyamaxa that recuperated its land, one cannot deny the role the state played afterwards, however, it was the Community that truly recuperated its land'¹²⁶. This decision had a major impact on the events that followed, forcing the State decide if to displace the community, favouring the wishes of the businessmen to whom the land belonged, but further contending its international legal obligations. The successful advocacy campaign supported by TierraViva and Amnesty International Paraguay, ensured that the government was under the watchful eye of the international community, which exerted pressure on the State and acted as an effective protection mechanism for the Community¹²⁷.

After various attempts by the State to force the Community to abandon their land, in an unforeseen move by the National Congress in May of 2004, the draft resolution filed by the Community was sanctioned. The affected ranch owners filed a claim of unconstitutionality, however, in October of 2014, the Judiciary rejected this claim and ended Sawhoyamaxa's long legal battle. It is relevant to note that this case is representative of that of the majority of communities in the region and the Sawhoyamaxa decision inspired various indigenous movements, as well as having an impact at both national and international level in relation to indigenous land rights¹²⁸. Further analysis of this impact does not enter into the scope of this thesis.

5.6 Sawhoyamaxa's current situation

The most recent information regarding Sawhoyamaxa's situation was published in

¹²⁶ Interview with Cabello Julia, 'Interview with Julia Cabello' (5 July 2018).

¹²⁷ Julia (n 109) 2.

¹²⁸ *ibid* 2, 12.

2014¹²⁹ and consequently, it is valuable to provide a brief insight into the situation that the Community finds itself in currently to provide the necessary context for the subsequent analysis and conclusions presented. This section is based upon observations and informal conversations during time spent in the field, together with the data collected from the interviews and focus groups conducted. It is structured around the reparations ordered by the IACtHR.

5.6.1 Provision of basic services

The Community continues to be supplied with monthly food supplements by the government; the amount provided acts as a contribution towards that consumed by each family, but must be supplemented with additional food. The quality of the produce provided is described as often being poor, which has been raised officially between the government and the IACtHR and an agreement was reached to ensure that the quality of food provided was maintained. However, in the opinion of Community members interviewed the situation has not improved.

In regard to healthcare, it was confirmed that monthly medical visits to each of the settlements are taking place. However, the lack of medication available and the inexistence of a transport service in the case of emergencies, continues to leave the Community in a vulnerable position. Furthermore, it was disclosed that Community members continue to experience discriminatory treatment when accessing health services in Concepción and that the high cost of medical treatment continues to make the necessary medical care inaccessible.

In regard to education, each settlement has a functioning school building and teachers are provided by the State. The quality of the education provided was unable to be assessed as this was outside of the scope of this investigation. It should however, be noted that the data collected demonstrates that the education provided does not ‘respect the cultural values of the Community’ and is not ‘bilingual’ as established by the Court’s reparations¹³⁰. This will be further discussed subsequently. Various members of the Community highlighted the lack of necessary teaching materials

¹²⁹ see Julia (n 109).

¹³⁰ *Case of the Sawhoyamaya Indigenous Community v. Paraguay* (n 110) 102.

made available, and the inconsistencies regarding the provision of a snack for the school children at break time.

In regard to housing, the Community is currently in the first phase of construction of housing and sanitation facilities, which is due to be completed in the next few months. The criticism of this initial process, collected during fieldwork, is that some families have been excluded from this opening phase and will have to wait for the second stage of construction in order to be provided with appropriate housing.

As mentioned previously, the challenges divulged above must be considered within the context of a country which suffers endemic structural problems, resulting in the lack of provision of basic services and protect of basic rights for a large part of its population. This does not excuse the state of its obligations under international law or the insufficient protection of indigenous peoples rights. However, it is necessary to consider the wider context and maintain a broad perspective, in order to ensure that this case study is not viewed in absolute isolation, risking the lessening of the value of the conclusions drawn.

5.6.2 Development fund

The development fund ordered in the IACtHR's sentence has still not been established. The trial regarding the expropriation and misuse of the funds intended for the Community's reparations by senior employees, including the ex-president of the Instituto Paraguayo del Indígena is still in process. In effect, Sawhoyamaxa were returned their lands by the State without the provision of the resources needed to self-govern, to plan for their future development or to improve their economic situation as a community. How this has affected the ability of the Community to recuperate its cultural practices and traditional ways of living will be analysed at a later stage.

5.6.3 Lack of legal land titles

Further linked to Sawhoyamaxa's possibility to self-govern and exert control over the use of their land and its resources, is the fact that the trial regarding the official legal titles of their territory is still on-going as the price continues to be deliberated. This

was highlighted by members of the Community as ensuing a level of uncertainty and insecurity, even if the expropriation is irreversible.

5.7 Concluding Remarks

As has been demonstrated, even after the extended period of time the Paraguayan State took to recognise the IACtHR's sentence and return Sawhoyamaxa its land, it is yet to complete its obligations set out in the Court's judgment. The Community still awaits the official titles to its territory, the implementation of the development fund and the provision of adequate basic services. The impact that this has had on Sawhoyamaxa's culture identified in the findings will be explored in the following chapter.

This section has provided the necessary information regarding the situation on Indigenous rights in Paraguay, as well as highlighting the problems experienced widely at domestic level in order to view the Sawhoyamaxa case in context rather than in isolation. A summary of the Community's history and a brief timeline of their territorial claim has been provided as an introduction to the fieldwork conducted in order to enable a broader understanding of the findings presented in the following chapter.

Chapter 6

Data Analysis

This section will discuss the data collected from the fieldwork conducted for this investigation. To begin, the variables developed throughout the data collection and analysis, which were identified by the participants as the key elements that form as the Sawhoyamaxa Community's culture, will be explored in individual sections.

Each section will nurture responses to the sub research questions posed so as to demonstrate the elements that are considered to have made up the Community's

culture prior to the violation, how the lack of land effected their ability to live their culture and how, and if, the return to their territory and the reparations order have had an impact.

Subsequently, this initial analysis will be drawn upon in order to respond to the principal research questions, how the violation was perceived at local level and how the IACtHR's sentence is perceived to have affected the possibility of Sawhoyamaxa to live there culture, along with the broader questions initially posed regarding local perspectives, in the conclusion.

6.1 Sustenance practices

6.1.1 Hunting, fishing and foraging

The analysis will begin with an examination of the traditional practices that were disclosed as forming part of the Sawhoyamaxa Community's culture in regard to sustenance. It is important when discussing these practices to refer to the Enxet people's way of living prior to the expropriation of their territory, described in Chapter 5. The large expanse of land now referred to as the Paraguayan Chaco, was inhabited by various indigenous groups the majority of which lived following a cyclical semi-nomadic lifestyle. As confirmed during the fieldwork conducted, this way of life, and in particular this way of using the land, changed as the indigenous communities' access to their territory became increasingly limited. Sawhoyamaxa, similarly to various other Enxet communities, became a sedentary people.

The restrictions placed on the access to their traditional territory also had an impact on their diet. As their sources of food were significantly limited, self-sufficiency became unattainable and consequently external goods such as rice and pasta, which are now a central feature of the Community's present diet, were used to supplement the limited food supplies obtained from natural sources. This inability to maintain self-sustenance forced the majority of the members of the Community to take up work on the estates built on their territory in order to provide for themselves. During the period in which Sawhoyamaxa was displaced from its lands and lived on the estates, various traditional practices such as hunting wild animals, fishing, collection of

honey, foraging of fruit and plants continued to be practiced by the Community. 'Although by the second half of 1970s, it was estimated that over 70% of the people who lived in communities that had settled in private estates still hunted, fished and gathered, these practices were severely limited'¹³¹ and the Community became ever less self-sufficient. Additionally, the data collected shows a conviction amongst participants that the introduction of external goods was partially due to the cohabitation with the non-indigenous population which impacted their diet further due to the new availability of this food.

Maintaining practices that allowed for some self-sufficiency became even more of a challenge during the period in which the Community was living by the roadside. Without permission to use their traditional hunting and foraging grounds from the ranch owners, the resources available were limited to those that could be sourced from public spaces. It should be noted that members of the Community continued accessing the land covertly out of necessity and 'almost as a reaffirmation of their right'¹³², putting themselves at risk of repercussions by ranch owners and their guards, as described by various members of the Community. This continued as obtaining food from the land, even with such impediments, remained essential during this period, as government support was limited and food supplies were scarce. One participant recalled that 'when we had nothing to eat at home' they would rely on their ability to 'forage for traditional ingredients from the mountain' as 'we could not go home empty handed'¹³³.

Since the return to their territory, the data collected established that the Sawhoyamaya Community has been able to recuperate these practices which can now be carried out without fear of retribution. This reclaimed freedom of movement, which will be further discussed subsequently, means that these activities can be carried out where and when Community members so desire, in stark contrast to before. Although, it was noted that a minority of families chose not eat any traditional ingredients, hunting, fishing and foraging remains commonplace for the majority of the Community's members. It this does not however, constitute all that families consume and

¹³¹ *ibid* 18.

¹³² 'Interview with Rodrigo Villagra' (8 June 2018).

¹³³ 'Participant from Focus Group 1' (31 May 2018).

consequently total self-sufficiency has not been recuperated. A monthly quota of food is provided by the government, made up of ingredients deemed non-traditional, which it could be argued facilitates the continuation of their inclusion in the Community's diet. Although some of the new generation is said to have less of an interest in following a more traditional diet, an effort to pass on these traditions to the younger generation, following the belief in the importance of sustaining such cultural practices, was observed.

6.1.2 Agricultural practices

During the fieldwork conducted, agricultural practices, both small-scale horticulture in the form of vegetable gardens and the keeping of livestock, were determined to be part of the Sawhoyamaxa culture. The abundance of food that such sources produced prior to the expropriation of the Community's land was noted. One interviewee recounted, 'we could say that now we are poor, because in the past our people living in this region had horses, cows, large vegetable gardens and orchards, in the past they had everything'¹³⁴. For the large part, ranch owners did not allow personal cultivation on their estates, 'often not due to space, but as it was a way of demonstrating that the land was theirs'¹³⁵. Consequently, although in some cases limited some planting was permitted, cultivation was greatly limited during this period. Whilst living on the roadside some small-scale cultivation was also attempted, but physical limitation as well as the quality of the soil in the space available minimised this possibility. As the anthropologist Rodrigo Villagra explains, 'the recuperation of a personal space, land which can be tended to, which can be bettered, as well as its practical implications, also has symbolic value for the Sawhoyamaxa people'¹³⁶. As described by a member of the community, having our land 'means the possibility for a better life'; it 'provided food in abundance for my parents and this means a lot to me'¹³⁷. This demonstrates the practical importance of the land in regard to the physical survival of the Community combined with the symbolic meaning that it holds for its members.

¹³⁴ 'Interview with Doña Aparicia' (2 June 2018).

¹³⁵ 'Interview with Rodrigo Villagra' (n 131).

¹³⁶ *ibid.*

¹³⁷ 'Interview with Doña Aparicia' (n 133).

The importance of continuing the traditional sustenance practices that form part of their culture, due to their connection with the Community's survival, was highlighted again in regard to the importance of the particular piece of land claimed, in comparison to that found in alternative geographical locations. One of the factors mentioned was that the Community's territory provides the collective with the specific natural resources that are essential for its survival. As explained by one interviewee, 'this land gives us what we need to survive – the other land doesn't have the resources that our land does'¹³⁸.

Following the reoccupation of their territory, there has been notable growth in the quantity of animals kept in the Community and some horticultural practices have been recuperated. Furthermore, a pilot project to test the feasibility of a communal orchard is underway in the 24 de enero settlement. The establishment and implementation of the development fund included in the sentence will provide the possibility for additional projects of this type and the potential for the further creation of independent food sources for the collective. This would provide the opportunity for the Community to return to being more self-subsistent, should the Community decide to. Until government fulfils its obligations however, the Community remains restricted by the financial implications incurred at the initiation stages of projects aimed at recuperating the self-sustainability practices that have been lost.

6.1.3 Sharing and community organisation

A further feature of the Sawhoyamaxa's culture acknowledged during the fieldwork conducted is the concept of sharing amongst community members. Traditionally when food was obtained as a result of the various practices described, it was then shared out with other members of the Community. There were mixed opinions regarding the continuation of this tradition with some Community members assuring that this practice is upheld and others noting that the younger generations are losing this custom and that the commercialisation of the products is becoming more

¹³⁸ *ibid.*

common. There was not sufficient data to further expand on this concept or how the violations impacted this practice.

It is necessary at this stage to consider that one could explore further how the Community is organised, its power structures and its separation into bands for example, and the social norms followed as a collective, such as the traditional roles adopted in relation to gender. From an anthropological perspective these elements form key parts of a group's culture however, these elements were not included as the focus of this investigation is centred around the perspective of actors involved, with the intention of using the definition of culture outlined by the Sawhoyamaxa Community. As such elements were not identified as forming part of the culture during data collection, it was decided that they would not be analysed as this would fall out of the scope of this particular research.

Figure 1: Traditional food sources for the Sawhoyamaxa Community detailed during the research conducted

<p><i>'El monte es como nuestro supermercado'</i></p> <p>The mountain is like our supermarket</p>
<p>Foraging</p> <ul style="list-style-type: none">- Honey- Crocodile eggs- Fruit: passion fruit, cactus fruit- Heart of palm, dried under the sun and ground into a type of flower to make tortillas that were used as bread.
<p>Hunting</p> <p>Peccary, jaguar, wild boar, ostrich, wild birds, armadillo, crocodile</p>
<p>Livestock</p> <p>Goats, sheep, horses, cows, pigs, chickens and other native birds</p>
<p>Vegetable garden</p> <p>Yucca, potato, corn</p>

6.2 Shamanism and traditional healing practices

Shamanism and traditional healing practices are very much deemed part of Sawhoyamaxa's culture. Historically there were various shamans who played an important role in the Community, as described subsequently at various points in this analysis. The shamanic tradition began its demise as the Community moved into the estates on the cattle ranches and then onto the roadside. There is currently only one shaman left in Sawhoyamaxa, Don Marciano who kindly participated in this research. When questioned as to why there has been such a significant reduction in the practice, three main factors were identified. Firstly, the lack of access to their territory and the deaths of those with the required knowledge were highlighted. In order to become a shaman one must have the guidance and support of a practising shaman and for this reason the lack of members with this knowledge further prevents the continuation of this tradition. The remaining shaman is teaching his grandchildren Enxet, as knowledge of the traditional language is a condition for becoming a shaman, as well as the necessary herbal medicinal preparations in an effort to prevent the loss of these practices. However, the attitude of the younger generation who is said to lack interest in completing what is deemed as a dangerous process to become a shaman an additional factor that could be linked to the influence of modernisation discussed subsequently. The data collected demonstrates that the belief in the superiority of traditional shamanic healing practices over that of western medicine remains for many members of the Community. Nonetheless, the influence of the Community's contact with religious groups in the area must be noted here, which is said to have played a part in this demise. The data shows that an increasing number of Community members are visiting the local medical facilities and hospitals. One could speculate that the lack of shamans provoked the necessity to use such facilities, or that this is a possible demonstration of the modernisation of the community, a concept that will be explored further subsequently. However, additional investigation into this change is needed to draw further conclusions in this regard.

As well as the practice of shamanism, it is necessary to analyse the wider tradition of healing practices using the natural resources found within their territory, which is diffused throughout the community. Insufficient data was collected regarding any

changes in this practice during the period in which the Community lived in the estates, although no restrictions were identified. Whilst settled by the roadside, access to the natural resources needed to continue such activities was severely limited however, due to the lack of support received from the government during this period, ‘without medical assistance the Community was forced to conserve and use their traditional knowledge’¹³⁹. Often this was relied upon, as it was the only option available. An example of the impact that the limitation of this practice had on the Community was identified during the interviews conducted, suggesting a clear link between Sawhoyamaxa’s culture, their land and the physical survival of the Community as described by the IACtHR and elaborated upon in Chapter 3.

As mentioned previously, following the issuing of the sentence, in a short period of time, eight children in Sawhoyamaxa died suddenly. The reason behind these sudden deaths was unclear and the State did not act to resolve the problem leaving the Community in an emergency situation. Out of sheer desperation, the women of the Sawhoyamaxa risked their own safety to entered illegally into their land to collect the plants that they believed would cure the children that continued to be unwell. From the point in which the Community began using their own traditional medicine to cure the remaining sick children there were no further fatalities. As Julia Cabello, TierraViva, stated when interviewed, ‘I still ask myself today, if they had had their lands, it is probable that those children would not have died’¹⁴⁰. This supports the notion that for Sawhoyamaxa their territory is a necessity in order to live their culture and this in turn is a necessity in order to ensure the very survival of its members.

In spite of the decline of shamanism, the use of traditional healing practices is described in the data as continuing to being widely used today. Great pride amongst the Community in their ability to cure sicknesses using traditional methods sourced from their lands was deduced from the data and efforts to ensure the continuation of this tradition were observed. It was also made clear that the return to their territory has facilitated the continuity of these practices due to the renewed access to the

¹³⁹ ‘Participant from Focus Group 1’ (n 132).

¹⁴⁰ Interview with Julia (n 125).

necessary natural resources without fear of being ‘assaulted by white men or Paraguayan people’¹⁴¹ experienced previously when covertly accessing their territory.

In regard to the younger generation however, there were mixed responses from those who participated in the investigation. On the one hand, it was recorded that the younger generation believes less in the effectiveness of natural remedies and that western medicine is often preferred. On the other hand, some younger members of the Community that participated in the research expressed their conviction that western remedies were ineffective and their belief in exclusively using traditional healing methods. This suggests that this part of the Community’s culture may change in the future, influenced by factors external to the access to land. It also highlights the fluidity of culture and the potential changes provoked by other factors aside from the lack of territory, a concept that will be further explored in the final chapter.

6.3 Other land use and artisanal activities

6.3.1 Clothing

The traditional clothing worn by the Enxet people was made from the natural resources that were available within their territory. Traditional materials provided as examples were the use of fibre from the thistle plant for thread and skins from wild animals used to make shoes. The tradition of hand making clothes is now almost completely extinct. When questioned, the lack of access to their territory over the years was identified as a reason that caused the loss of such practices, due to the limited access to materials. A further artisanal activity that was practiced extensively amongst the Community prior to the expropriation of their lands was the working of sheep’s wool by hand to make blankets, clothes and saddle coverings. This practice, although traditionally carried out using wool obtained from the Community’s animals, continued and was greatly encouraged in the cattle ranches due to the plentiful supply of wool and the value given by the ranch owners to this artisanal work. There was a decline in this practice due to the lack of resources the Community had access to whilst settled by the roadside. The near loss of the traditions mentioned above is

¹⁴¹ *Case of the Sawhoyamaya Indigenous Community v. Paraguay* (n 110) 88.

evident as today almost all clothing worn today is purchased and very few people continue such practices.

6.3.2 Weaving

Another artisanal practice is basket and fan weaving¹⁴² using dried palms leaves, a practice in significant decline. As a result of the lack of access to materials that the Community had over the two decades that they spent living by the roadside, such techniques were not transmitted to the new generation. Furthermore, as highlighted by one Community member, whilst by the roadside it was difficult for the women of the Community, who traditionally partake in these activities, due to the extra attention that was required to look after the children, considering the risk of them running into the road. A strong desire amongst those who participants in the fieldwork to recuperate such practices and unite the women of Sawhoyamaxa in order to pass this knowledge down to the younger generations was demonstrated by the data collected. There is potential for revival projects to be implemented with the support of the development fund, expanded further in the conclusions chapter.

6.4 Housing

A further practice divulged from the data collected also linked to the practical use of natural resources, is the traditional way of constructing houses using parts of Palm and Carob trees. The data collected did not establish exactly how this practice was affected whilst the Community lived in the estates. Whilst living by the roadside, the access to such materials was limited, making it harder to continue such practices and consequently manmade materials were often used. It is interesting to note the opinion of one Community member regarding the construction of houses currently in progress and her expectations of how the Community would live once moved back into its territory. ‘I would have liked it more if a policy had been designed to allow us to live in accordance with our previous cultural traditions, live in our traditional houses, I

¹⁴² Fans – used to stoke fires

had this hope when we entered here as this way we would strengthen and promote our culture, but now we cannot as the new generation is very accustomed to mainstream culture'. The point was raised by some of the older members of the community, that they prefer to continue to living in their traditional houses, leaving the new constructions to the younger generation, who as described are more open to 'mainstream culture'. This description could be read to suggest the influence that contact with other cultures as well as modernisation has had on the younger generations which may have effected the Community's culture. The consideration of culture in regard to the implementation of the sentence and the effect of other influences on cultural transformation will be further analysed in the final chapter.

6.5 Rituals and ceremonies

From the perspective of the Community members that participated in the study, the lack of access to their land had a significant effect on the rituals and ceremonies that form part of the Sawhoyamaxa culture, which will be explored further in this section.

6.5.1 Burial ceremonies

As highlighted in the case, the violation of the right to property resulted in the prevention of the burial of Sawhoyamaxa's dead in the their ancestral lands which generated 'feelings of sadness and guilt to the members of the Community'¹⁴³. The data gathered demonstrates that the restrictions imposed on the Community's access to traditional sacred burial sites began at the point in which they moved on to the cattle ranches. Rather than burying their dead along side their ancestors in their traditional sites, the Community members were forced to use the indigenous graveyards located in the various estates. Whilst on the side of the road, some members of the Community were buried by the roadside as relationships with the landowners had diminished. This desire to bury their dead in places the Community

¹⁴³ *Case of the Sawhoyamaxa Indigenous Community v. Paraguay* (n 110) 88.

deem sacred was described during this research as one of the motivating factors for the fight to reclaim the land. This further supports the evidence collated in the case which was deemed as a key factor by the IACtHR in its interpretation of Article 21 as it demonstrates the connection between Community and its land as greater than that of mere possession. The importance of being buried in their land was described by one of the members of the Community. ‘We were born on this land and it is here where we want the new generation to bury us’¹⁴⁴. The return to their territory has provided Sawhoyamaxa with the possibility to once again bury its dead at the sites deemed sacred. At this stage it should be noted that the sites traditionally used are now only reserved for specific cases and a new graveyard has been created. This is an example of how cultural practices evolve and further supports the concept of culture as something that is not static explored subsequently.

It is necessary to look at the traditional rituals conducted prior to the death of a Community member, as these traditions were also identified during the interviews as having cultural value. Traditionally, the Community would come together to accompany the dying person in their last moments, remaining with them until after they had passed away. Herbal remedies were prepared and be shared among those present, in the aim of ensuring that there would be no further fatalities from the same cause. Although not explicitly mentioned, factors that are not linked to the land such as the contact with non-indigenous culture have had an impact on the continuation of such a practice. Such factors that may have provoked a change in the culture which are not directly linked with the lack of land must also be considered. It could also be argued that if the Community had not been displaced as a direct impact of the expropriation of their territory, such a practice may have evolved differently and the influence of different cultures may have been less. There is not sufficient data on this topic to make concrete conclusions and exploring these points in further in great depth is outside of the scope of this thesis however, such elements should be considered and will be analysed briefly in the subsequent chapter.

¹⁴⁴ ‘Interview with Doña Belén’ (4 June 2018).

Figure 2: Traditional Sawhoyamaxa dances

Traditional Sawhoyamaxa dances
Hu-aaqua - celebration of women
Chaie - celebration of men
Nalmana - celebration of older people
Wekeneten - dance used for various celebrations, practiced and involves all members of the community.
Part of the tradition followed before a celebration was to bury the fruit from the Carob tree which once fermented was turned into the a traditional drink called 'chicha'. Once ready it was then shared among the adults and consumed during these celebrations which could last days.
<i>* Dance names in Enxet</i>

6.5.2 Dances

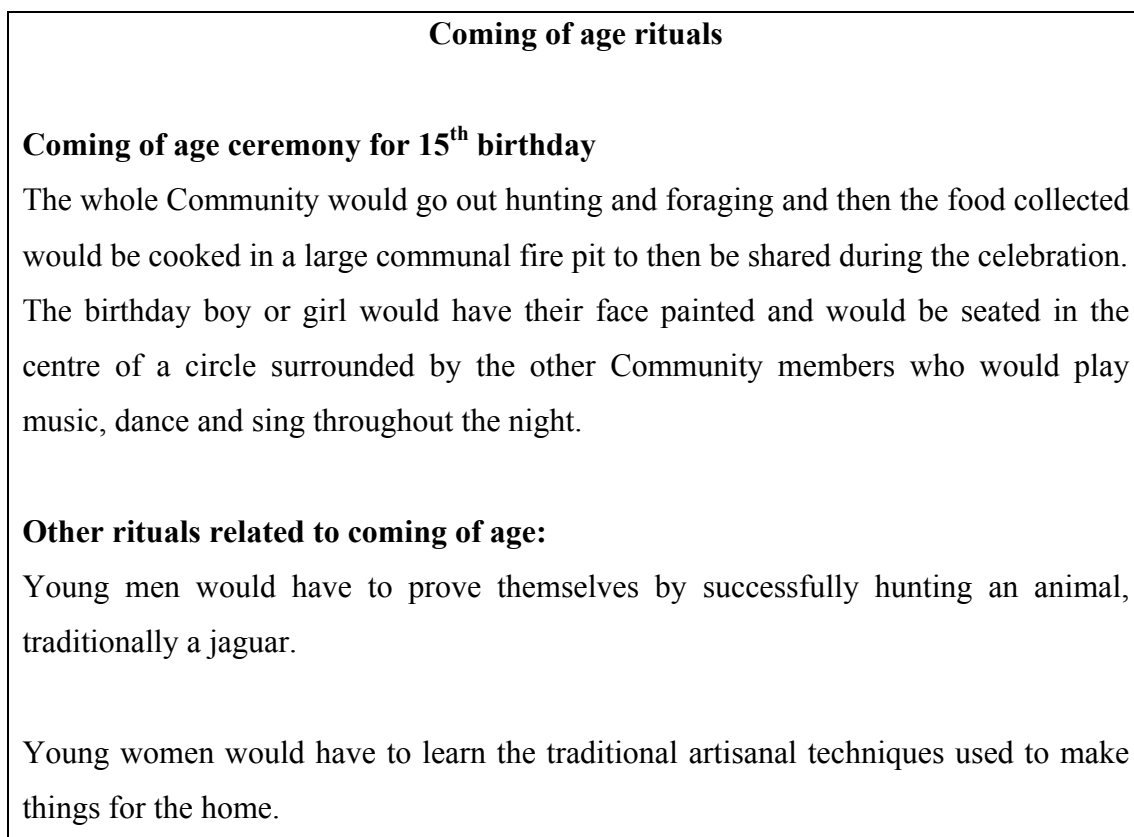
Another element recognised as forming part of the Community's culture is the various dances described in the box above organised for different celebrations. Of those described, the 'Wekeneten', a celebration that includes members of the Community of all ages, continued to be practiced throughout the Community's time spent away from their lands and is still celebrated today. From the data collected, the reduction in frequency of the other celebrations and their eventual demise is linked to the limited access to their territory. As described by one interviewee, 'dance was an important tool used to unite people in the context of Sawhoyamaxa's fight for territorial restitution', whilst the Community was living in separate areas consequently, to a limited extent, this traditional was continued. During the period situated on the roadside dance was also used to foster unity and was also a tool with which to manifest cultural pride during public protests. It was highlighted that these traditional dances are not practiced even following the reoccupation of the Community's ancestral lands partially due to the lack of shamans left in the community, discussed

in section 6.2, as the songs sung at these celebrations are sacred and are guarded by shamans and cannot be sung by anyone else.

6.5.3 Coming of age ceremonies

Traditionally in Sawhoyamaxa coming of age ceremonies, celebrated when boys and girls reached the age of 15, were deemed an important event established in the Community's cultural heritage. A celebration was held in the 15 year olds honour, which included various rituals as detailed in *Figure 3*. Such ceremonies are not practiced anymore, although reaching this age remains of importance within the Community. The reason behind this decline in such celebrations was described as being as a consequence of the expropriation of their territory however, exactly how this effected this tradition was not detailed further. When recuperation of such traditions was discussed, the disinterest of the younger generation in the traditional celebrations was also mentioned, a further suggestion of the transformation of the culture and the influence of modern external influences.

Figure 3: Coming of age rituals



The lack of access to their lands and the consequential separation as a Community has had a marked effect on all the above-mentioned rituals and celebrations. It is necessary to consider, as identified during fieldwork that the younger generation was identified as being less interested in recuperating such practices and this can be viewed as the impact of modernisation. As mentioned previously, the astatic nature of culture and the influence of the cohabitation with non-indigenous culture can also be linked to these changes in the Community's rituals will be further elaborated upon in the conclusive remarks.

6.6 Language

As detailed previously, the traditional language of the Sawhoyamaxa Community is Enxet. However, as the Community was displaced and began living on different cattle ranches, the Enxet language went into decline and began to be replaced by Guarani. This phenomenon, from the perspective of the actors interviewed, was a consequence of the increased contact with the non-indigenous population. Guarani was learnt as a survival mechanism, used as a tool to facilitate communication with others outside of the Community, which became necessary in the situation Community members found themselves in. Enxet was used less frequently and consequently, the natural process of cross-generational transmission was steadily lost. In addition, facilitating this loss further, and the Sawhoyamaxa children were educated in either Guarani or Spanish.

The fieldwork conducted demonstrates that the Community's reoccupation of their territory has not had an impact on the loss of language, as now a structured recuperation effort would be necessary. Although there are some efforts by older members of the Community to teach the language to their grandchildren, there are very few trained teachers that speak the language in the region and those currently working with the Community's schools do not have this capability. Consequently, no formal language learning is provided. The loss of the traditional language is specifically highlighted during the case and in the IACtHR's reparations, where the Court orders the provision of education as part of basic services to the Community. Specifically the Court states that 'the education provided must, inasmuch as possible, respect the cultural values of the Community and of Paraguay, and is to be bilingual;

in the Enxet language, and at the discretion of the members of the Community, either in Spanish or in Guaraní¹⁴⁵. This part of the sentence has been implemented in as much as the provision of basic education however, no cultural consideration has been made and the education provided is not bilingual. Considering the unlikelihood that the government will fulfil these obligations, the development fund promised to the Community could help to facilitate the teaching of Enxet, should the Community chose to implement such a scheme. This provides a clear example of the reduction of the impact of the sentence due to its untimely and incomplete implementation. It is necessary to note the structural problems in Paraguay regarding the provision and the quality of education, which can be seen manifested in the case of Sawhoyamaxa. This does not detract from the fact that it is the State's obligation to provide education in the minority language however; it must be taken into consideration in order to view this case in context rather than in isolation.

6.7 The importance of the land

This section will analyse the connection identified between the Sawhoyamaxa Community and their land, an element that influenced the IACtHR's jurisprudence and which appeared repeatedly throughout the research conducted. Although not explicitly expressed using such terms, this section analyses spiritual and emotional connections with the land, its importance and how the land is described as 'forming an integral part of the Community members identity'¹⁴⁶.

The sense of belonging to the land was a motif that was repeated throughout various interviews conducted. One participant describes feelings of serenity, 'as she feels part of the land'¹⁴⁷. This is demonstrative of the difference between the indigenous and the traditional interpretations of the right to property. Traditional conceptions are based around the idea that land belongs to the people. For indigenous people on the other hand, 'the feeling which can be inferred is the sense that, just as the land they occupy belongs to them, they in turn belong to their land. They thus have the right to preserve

¹⁴⁵ *Case of the Sawhoyamaxa Indigenous Community v. Paraguay* (n 110) 120.

¹⁴⁶ 'Interview with Doña Belén' (n 143).

¹⁴⁷ 'Interview with Doña Aparicia' (n 133).

their past and current cultural manifestations, and the power to develop them in the future'¹⁴⁸. This further demonstrates the need to consider this differing interpretation of the right to property, and the local impact of its violation, in order to effectively protect indigenous peoples' rights.

This concept also links to the emotional connection mentioned previously regarding the burial of the deceased within the Community's territory. As described by one of the interviewees 'we greatly value the land, it identifies us, we were made by the land and we will return to it and for this reason it is sacred and has great value for us. It was necessary to secure the lands to give ensure the wellbeing of all the members of Sawhoymaxaxa'¹⁴⁹. The concept of the land being linked with the wellbeing of the Community members is another motif that appeared consistently throughout the interviews conducted. As described by an interviewee the decision to reoccupy their lands was made as 'we didn't care about anything anymore, we had always lived as if dead, we were not therefore afraid of death'. This demonstrates the psychological effect that being outside of their territory had on the Community and shows the emotive connection they feel with their land. This concept is established by the repeated descriptions of feeling of serenity and peacefulness in the data, linked to the living once again in their territory. As one participant describes a feeling shared by many, 'when you have your land you feel calmer, you feel more relaxed, you feel safer'¹⁵⁰.

Linking access to the land to the concept of freedom also appeared as a consistent theme in the data. This is linked both to the practical consequences, in the ability to carry out the traditional practices discussed previously, whilst also having emotional value. Shortly after the Community reoccupied its land, TierraViva organised a book launch and press conference to be held in the Community in order to draw media attention to and support for their reoccupation. A tactic employed by the NGO in an attempt to protect the Community from being forcibly removed. The day prior to the launch it rained so heavily that the event had to be cancelled. Disappointed, and concerned for the safety of the community, TierraViva team travelled to visit them.

¹⁴⁸ *Case of the Mayagna (Sumo) Awas Tingni Community v. Nicaragua* (n 52) par. 8, 2.

¹⁴⁹ 'Participant from Focus Group 2' (n 113).

¹⁵⁰ 'Interview with Doña Belén' (n 143).

Julia Cabello, one of the lawyers in TierraViva who lead the Sawhoyamaxa case, recalls the following. ‘I remember that I was at Doña Aparicia’s house and ... I remember that they had just entered their lands, and the children were playing, they were playing in the rain and I started to think, no, they’re going to get sick again and this is going to cause another problem. So, I said to Doña Aparicia, please tell the children to come inside because it’s raining so hard and they’re going to get sick again! And she turned to me and said, Julia – ‘let them get sick! They’ve never run before, they are children that have never run, and if they get sick they will get better, but these children have never run in their land’. And I thought of course, when they were by the roadside these children had never been able to run, they are children that have never run and it was in that moment that I realised what value the land had for them ... and that these children would grow up with a different reality’¹⁵¹.

The above findings demonstrate that the conviction of the IACtHR that, ‘for the indigenous communities, their relationship with the land is not merely a matter of possession and production, but rather a material and spiritual element that they must enjoy fully, even in order to preserve their cultural legacy and transmit it to future generations’¹⁵², is true also for the Sawhoyamaxa community.

Chapter 7

Conclusion

The above analysis has discussed the different elements that were identified as constituting Sawhoyamaxa’s culture, how these were affected by the violation of the right to their territory and the impact of IACtHR’s sentence. This section intends to summarise these findings and draw concrete conclusions from the above discussion in order to answer the wider research questions established.

¹⁵¹ Interview with Julia (n 125).

¹⁵² *Case of the Mayagna (Sumo) Awas Tingni Community v. Nicaragua* (n 51) paras. 149, 74.

This investigation has explored how the violation of the Sawhoyamaxa Indigenous Community's right to property, in the form of the expropriation of their land, was perceived from a local perspective, with a focus on its implications on the Community's culture. As has been explored, the relationship between the Community, its culture and the land was key in the IACtHR's interpretation of this right in its jurisprudence. The clear impact that the lack of access to their land has had on Sawhoyamaxa's culture, as established in the data collected, confirms this intrinsic connection between their culture and the land and how this influences their local view of the right to property. As highlighted by the IACtHR:

*'The culture of the members of indigenous communities reflects a particular way of life, of being, seeing and acting in the world, the starting point of which is their close relation with their traditional lands and natural resources, not only because they are their main means of survival, but also because the form part of their worldview, of their religiousness, and consequently, of their cultural identity'*¹⁵³.

It has been demonstrated that, as a direct consequence of the lack of access to their territory, Sawhoyamaxa has experienced the disappearance of various traditional celebrations and rituals, as well as the near loss of its language and the practice of shamanism. Furthermore, the above analysis reveals that the Community's ability to continue practicing its natural healing techniques, traditional sustenance activities and artisan traditions was severely limited. The impact that the lack of access to their territory has had on the Community's ability to protect its cultural heritage and continue practising its culture, and how this results in putting the very survival of the group at risk, is consistent with the opinions stated in the jurisprudence of the IACtHR on indigenous lands rights cases. The impact that the violation had on the Community's culture supports the conclusion that, due to the specific meaning that the right to property has for indigenous communities, which differs from a more traditional interpretation, it is necessary that these local perceptions are considered in order to effectively protect their rights and implement reparatory measures.

At this stage it is necessary to contemplate, in relation to the results collected and

¹⁵³ *Case of the Sawhoyamaxa Indigenous Community v. Paraguay* (n 110) paras. 118, 71.

when considering what has been referred to as the loss of culture, the fiction ‘of culture as homogenous and static’¹⁵⁴ when instead ‘contemporary global culture is intensely dynamic and marked by complex patterns of hybridity’¹⁵⁵. It has been demonstrated throughout the analysis conducted that as a consequence of not having access to their territory for an extended period of time, elements of Sawhoyamaxa’s culture have been lost. However, if the above statement is considered together with the interpretation of culture as a fluid, changeable concept, ‘rather than losing culture, culture is replaced’¹⁵⁶. Consequently, the phenomenon that has been described can instead be viewed as cultural development, rather than loss. ‘This replacement of one practice for another, does not necessarily have a positive or negative connotations’¹⁵⁷ and is a transformation that all cultures go through over time.

It is also necessary to consider that in this case such transformations were influenced by other factors aside from the lack of access to territory. The complex task of establishing to what extent these factors have had an impact and whether this would have differed should the Community have remained in its lands, falls outside of the scope of this thesis however, it is relevant to briefly acknowledge their potential influence on the changes perceived.

The perception that the contact with non-indigenous peoples has been, and continues to be, a danger to the ‘fragile indigenous culture’¹⁵⁸, was disclosed throughout the data analysis. It is clear that for example the use of Guarani over the traditional Enxet language and the introduction of non-traditional food sources are consequences of these two cultures cohabitating. Some of these changes were then fomented as even following the move back into their territory, as one leader describes, this new ‘culture is now maintained because we got used to the way it was by the roadside’¹⁵⁹. Consequently, one could argue that it is a direct result of living outside of their

¹⁵⁴ Ann-Belinda S Preis, ‘Human Rights as Cultural Practice: An Anthropological Critique’ (1996) 18 *Human Rights Quarterly* 286, 293. As cited in George Ulrich, ‘Universal Human Rights: An Unfinished Project’ in Kristen Hastrup (ed), *Human rights on common grounds: the quest for universality* (2001) 196.

¹⁵⁵ Ulf Hannerz, *Cultural Complexity: Studies in the Social Organization of Meaning* (Columbia Univ Press 1992). As cited in George Ulrich, ‘Universal Human Rights: An Unfinished Project’ in Kristen Hastrup (ed), *Human rights on common grounds: the quest for universality* (2001) 196.

¹⁵⁶ Interview with Julia (n 125).

¹⁵⁷ *ibid.*

¹⁵⁸ ‘Interview with Doña Belén’ (n 143).

¹⁵⁹ ‘Interview with Leonardo González’ (2 June 2018).

territory that caused these sometimes-irreversible changes. However, if one considers that ‘cultures exist only in relation with one another and constantly change, absorbing elements of other cultures’¹⁶⁰, although it could be argued that the displacement of the Community potentially sped up this process or resulted in it having a greater impact, one could also take the view that such an infusion would have occurred irrespectively. Considering the lack of isolation experienced by the community, this argument is further supported by looking at the influence that contact with other communities had begun to have on pre-colonial Enxet culture. Anthropologist Stephen William Kidd explains; ‘it should not be thought that pre-colonial Enxet culture was in a "steady-state". It too was continually being transformed and, despite a balanced structure of contact with other societies, this change was caused by intersocietal contact’¹⁶¹.

Related to the impact that contact with other cultures can have, is the concept of modernisation, which is often described in the data as the changes that can be seen in the new generation. As Claude Lévi-Strauss states:

*‘Hardly any indigenous peoples have been bypassed by modernization: their subordinate incorporation into the modern nation-state has been followed by their integration into the national productive system and their subjection to a variety of mechanisms of social control ranging from state bureaucracy to education and religion’*¹⁶².

This has also been the case with Sawhoyamaxa due to its forced integration into the national work force and reliance on the State for the provision of basic services. As identified in the data, the concept of culture is changing for the new generation and changes such as the new housing being constructed demonstrate the Community moving into a new era.

¹⁶⁰ Claude Lévi-Strauss, *Race and History* (Paris : UNESCO 1952)

<<http://archive.org/details/racehistory00levi>> accessed 14 July 2018. As cited in Anna Maria Kowalczyk, ‘Indigenous Peoples and Modernity: Mapuche Mobilizations in Chile’ (2013) 40 *Latin American Perspectives* 121, 124.

¹⁶¹ Kidd (n 112) 54.

¹⁶² Lévi-Strauss (n 159). As cited in Anna Maria Kowalczyk, ‘Indigenous Peoples and Modernity: Mapuche Mobilizations in Chile’ (2013) 40 *Latin American Perspectives* 121, 131.

It is clear from the analysis that Sawhoyamaxa as a collective has been ‘conditioned by the restrictions on access to their territory and that this has effected their ability to develop their cultural practices’¹⁶³. It could be argued that if the Community had retained access to their land, although influenced by the above factors, their culture would have developed in a different manner, perhaps retaining some elements which have instead disappeared. However, as shown by looking at the Enxet history, there is a strong suggestion that some change in itself is unavoidable due to the nature of culture. Although, such transformations should not necessarily be defined as negative, it must be ensured that indigenous communities are ‘not to be subjected to forced assimilation or destruction of their culture’¹⁶⁴ which occurs when such changes are imposed by a denial of their rights, demonstrated in the Sawhoyamaxa case as a result of the restrictions placed on access to territory.

Following the analysis of what Sawhoyamaxa defines as their culture and how it was impacted by the violation, at this stage it is necessary to look at how IACtHR’s sentence, as an example of how an international mechanism considered local perceptions in its interpretation of the rights, had an impact on the Community’s culture. Although briefly mentioned in regard to each of the variables analysed, to conclude it is necessary to summarise the impact of each of the reparations ordered by the Court.

As analysed previously, regardless of the restrictions limiting their practice being lifted, it is necessary to note that some practices have not been affected by the return of the Community to its territory. The drastic decline in the use of the Enxet language now requires the implementation of a formal strategy in order to reintroduce the language and support its revival. Similarly, the reduction in the practice of shamanism and the practice of certain rituals has not been reversed by the return due to the other factors detailed previously that impact these traditions’ restoration. The data suggests that the recuperation of artisanal practices also requires the implementation of an organised plan in order to facilitate this, as such traditions have not been passed down through the generations and consequently the return of the community’s land does not

¹⁶³ Interview with Julia (n 125).

¹⁶⁴ ‘United National Declaration on the Rights of Indigeneous Peoples’ (2007) A/RES/61/295 Art. 8, 5.

have an impact. The reoccupation of Sawhoyamaxa's territory has however, enabled some restoration of the cultural practices that were drastically affected by the restrictions put in place. Practices that are directly dependent on the availability of natural resources such as sustenance based activities and traditional medicinal practices can now be carried out without fear of retribution as the Community's freedom to access the necessary materials has been restored. As one interviewee explains the recuperation of such practices is the result of a collective feeling of 'stability, of feeling safe in ones environment which provides the possibility to practice their culture once again'¹⁶⁵.

It is relevant to note that in regard to the language and artisan practices, where little progress in terms of recuperation has been made, there is a strong desire to strategize and implement projects to pass down such knowledge to the younger generations. As one Community member stated there is a collective the feeling that 'the land is one of the most powerful tools we have and it forms part of our culture, for this reason ... we want our children to recuperate what was lost'¹⁶⁶. Older members of the Community who have the knowledge of the traditions that are in demise describe ensuring the recuperation of this lost culture as their 'duty'¹⁶⁷ demonstrating that the preservation of their culture identity is regarded of great importance.

This desire for cultural preservation and revival is linked to the establishment of the development fund ordered by the Court. The data demonstrates the belief amongst the participants that this fund will provide the Community with the opportunity to develop projects with the aim of recuperating their cultural practices and elements of their traditional lifestyle. Examples provided were the further acquisition of livestock and the creation of Community vegetable gardens that would allow the return to a greater extent of self-sustainability. Additionally, the teaching of other cultural practice such as traditional artisan techniques alongside the formal education provided was suggested. The ability to plan as a collective for the future, and to decide as a Community how they wish to preserve their cultural identify, has been denied by the delay in State's lack of fulfilment of this obligation.

¹⁶⁵ 'Interview with Oscar Ayala' (n 106).

¹⁶⁶ 'Interview with Doña Aparicia' (n 133).

¹⁶⁷ 'Interview with Leonardo González' (n 158).

It is key to note, as the data collected demonstrates, that the Community's culture was key to the litigation strategy applied and was given great importance in the Court's decision however, it not considered during the creation of the reparations ordered by the Court. Consequently, the impact of this progressive jurisprudence was limited to the interpretation of the Constitution. A clear example of this is the compensation issued to the families of the 19 fatalities. Compensation was issued individually, without consultation with the Community regarding the reparation itself or its implementation and therefore no cultural factors were considered. This resulted in a lack of consideration of the potential impact that issuing 19 out of 80 families living in absolute poverty with 20,000 U.S dollars could have on the collective. Four years later in the *Xákmok Kásek* case, one can see the similarity of the reparations ordered, however, there is an evident contrast in the consideration of factors such as 'the effect on its members and their cosmovision of not having possession of their traditional habitat'¹⁶⁸. This assessment of 'the special meaning that land has for indigenous peoples', demonstrates an extra step which was not taken in the *Sawhoyamaxa* sentence of considering the local at the point of forming reparations¹⁶⁹. The inclusion of such culture nuances in the planning of reparatory measures is an important step in the IACtHR's consideration of the local, as it ensures that the impact that the decision, which is made at global level, is felt at the local.

In the *Sawhoyamaxa* case, it is also important to consider that 'even if today the government fulfilled all its reparatory obligations, the impact would not be the same, as the IACtHR's sentence was constructed on the basis of simultaneous implementation of the reparations ordered'¹⁷⁰. The Community was returned their land, however, it was not issued with the legal titles to its territory nor provided with the development fund ordered. Furthermore, compensation was issued to the relevant families in small amounts, resulting in its use on basic goods such as foodstuffs or medical care rather than allowing planned investments. 'What is happening with *Sawhoyamaxa* and with other communities is that their sentences are being implemented in a fragmentary manner over an extended period of time and

¹⁶⁸ *Case of Xákmok Kásek Community v Paraguay (The Inter-American Court of Human Rights) paras. 316, 72.*

¹⁶⁹ *ibid* par. 321, 73.

¹⁷⁰ 'Interview with Oscar Ayala' (n 106).

consequently, the impact is not the same'¹⁷¹. As a result, Sawhoyamaxa was unable to develop the means to ensure their economic security or meet their basic needs as a collective. It also left the Community vulnerable to participation in illegal logging operations in order to support themselves, which have resulted in legal consequences for some of the group's leaders. As Anthropologist Rodrigo Villagra explains in reference to the denial of the Community's possibility of self-governance implicated by the lack of implementation of the sentence, 'a part of the ability to practice ones culture is the possibility to govern ones own institutions'. This is something that Sawhoyamaxa has been denied which has had an impact on other elements of its culture. This insecurity and continuing instability of not having the official title to their lands or the means to plan for the future, has greatly affected the impact of the Court's reparations and is a demonstration of the negligence of its obligations under international law by the Paraguayan State.

It is necessary to mention that the Sawhoyamaxa case is an example of the weakness of the regional system in regard to the lack of power over State's compliance with their international legal responsibilities. 'The Inter-American Court of Human Rights has on many occasions ruled in favour of indigenous communities ... however, the States concerned do not always fulfil their obligations, and these opinions and rulings sometimes remain without effect, which has serious consequences for protection of the human rights of indigenous peoples'¹⁷². The IACtHR's progressive 'multi-cultural' jurisprudence and this interchange between the local and the global can only be effective if it has an impact at the local level. As the Special Rapporteur on indigenous peoples rights states:

'The Court's decisions constitute per se a claim for the human rights of the indigenous peoples. However, these achievements cannot suffice if the States that is the object of those decisions fail partially or entirely to comply with the judgments. There is still a need for the inter-American human rights system - as for the international system as a whole - to find a way of making its decisions binding and to succeed in establishing sanction mechanisms to be applied to States that persist in

¹⁷¹ *ibid.*

¹⁷² 'Report of the Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People, Mr. Rodolfo Stavenhagen.' (2006) E/CN4/2006/78 17.

*ignoring them*¹⁷³.

There is not scope in this thesis to further analyse this implementation gap however, it can be noted that the ‘return to the global’ and consequently ‘the impact that knowledge and experiences accumulated by local human rights practices have or may have on future human rights development and interpretation’, is only as effective as the ability of those institutions adopting such progressive measures to enforce them, so that their impact is truly felt at local level.

To sum up, this investigation has demonstrated, through the study of the Sawhoyamaxa case, how the ‘cultural idioms by which human rights are justified and explicated are of immense local importance’¹⁷⁴. In this case, as identified in the data collected, this is seen through the analysis of the meaning that the Community gives to right to property, which adheres to the IACtHR’s interpretation exemplified below.

‘When property is mentioned in connection with the rights vested in the members of the indigenous communities ... as such over certain lands —to which they furthermore attach traditions and beliefs, spiritual relations that transcend the mere possession and economic enjoyment— the meaning labelled should not necessarily be confused with the absolute ownership that is characteristic of ordinary civil law. The property rights of the indigenous people are different —and so it must be recognized and protected— from this other form of ownership created by the European law rooted in liberal ideology’.

This different perception of the right to property is indicated by the impact that the limited access to their territory had on the Sawhoyamaxa Community’s culture. This case provides an example of how a global protection mechanism has begun to consider local nuances in its jurisprudence in a way that has enabled the further protection of indigenous peoples rights in the region. It demonstrates the progression towards a more localised approach to the protection of human rights and the potential that such considerations can have to ‘inspire the further interpretation and elaboration

¹⁷³ *ibid* 18.

¹⁷⁴ Felipe Gómez Isa and Koen De Feyter (eds), *International Human Rights Law in a Global Context* (University of Deusto 2009) 106.

of human rights norms'¹⁷⁵.

However, the Sawhoyamaxa case also shows that there is still a need for further consideration of the local in the creation and implementation of reparatory measures by the IACtHR in order to ensure that the impact of such dialogue is felt at local level. It is also important to consider that the impact that the IACtHR's sentence could have had on the Sawhoyamaxa Community's culture could not be fully assessed due to the lack of fulfilment by the Paraguayan state of its obligations. This has brought to light the failure of the regional mechanism to enforce its jurisprudence.

The Sawhoyamaxa's Indigenous Community's culture has been transformed, in part, as a direct consequence of the expropriation of their territory. However, as discussed, culture is not static, it develops and consequently the Community, once provided with the opportunity, may not return to living as they did before. Nevertheless, it is their right to be provided with the necessary tools to decide which elements of their culture they will strive to preserve and be free to practice their culture in the way that they so chose, without restriction. The importance of restoring their cultural identity was clearly demonstrated by the Sawhoyamaxa Indigenous Community throughout the investigation however, until the Paraguayan government fulfils its obligations, the Community remains victim to the on-going consequences of this violation and 'has to keep fighting'¹⁷⁶ for their rights.

¹⁷⁵ De Feyter (n 4) 23.

¹⁷⁶ 'Interview with Leonardo González' (n 158).

Bibliography

- Allmark P, 'The Ethics of Research with Children' (2003) 10 Nurse Researcher 7
- Azevedo V and others, 'Interview Transcription: Conceptual Issues, Practical Guidelines, and Challenges' (2017) IV Série Revista de Enfermagem Referência 159
- Benedek W, De Feyter K and Marrella F (eds), 'Localising Human Rights', *Economic Globalisation and Human Rights* (Cambridge University Press 2007)
<https://www.cambridge.org/core/product/identifier/CBO9780511493935A015/type/book_part> accessed 26 May 2018
- Brems E, *Human Rights: Universality and Diversity* (Kluwer Law International 2001)
- Charters C, 'Universalism and Cultural Relativism in the Context of Indigenous Women's Rights' [2003] SSRN Electronic Journal
<<http://www.ssrn.com/abstract=2887711>> accessed 26 May 2018
- Cowan JK, Dembour M-B and Wilson R (eds), *Culture and Rights: Anthropological Perspectives* (Cambridge University Press 2001)
- De Feyter K, 'Localizing Human Rights' [2006] IDEAS Working Paper Series from RePEc
- de Sousa Santos B, 'Toward a Multicultural Conception of Human Rights' in Felipe Gómez Isa and Koen De Feyter (eds), *International Human Rights Law in a Global Context* (2009)
- Donders Y, *Towards a Right to Cultural Identity?* (Intersentia 2002)
- Donnelly J, 'Human Rights: Both Universal and Relative (A Reply to Michael Goodhart)' (2008) 30 Human Rights Quarterly 194
- Donnelly J, *Universal Human Rights in Theory and Practice* (3rd ed, Cornell University Press 2013)
- 'End of Mission to Paraguay Statement: UN Special Rapporteur on the Rights of Indigenous Peoples, Victoria Tauli-Corpuz'
<<http://unsr.vtaulicorpuz.org/site/index.php/en/statements/44-end-mission-to-paraguay>> accessed 14 July 2018
- Estupiñan-Silva R, 'Pueblos Indígenas y Tribales: La Construcción de Contenidos Culturales Inherentes En La Jurisprudencia Interamericana de Derechos Humanos' (2014) 14 Anuario mexicano de derecho internacional 581
- Etxeberria X, 'El Debate Sobre La Universalidad de Los Derechos Humanos', *La Declaración universal de derechos humanos: un estudio interdisciplinar*. (Instituto de Derechos Humanos 1999)

Flick U, *An Introduction to Qualitative Research* (4. ed., repr, SAGE 2011)

‘Freedom of Religion and Religious Symbols: Same Right – Different Interpretation?’
<<https://www.ejiltalk.org/freedom-of-religion-and-religious-symbols-same-right-different-interpretation/>> accessed 26 March 2018

Garrido R, *La reparación en clave de diversidad cultural: un desafío para la Corte Interamericana de Derechos Humanos* (1. ed, Univ Andina Simón Bolívar, Ecuador [u.a] 2013)

Gómez Isa F, ‘Cultural Diversity, Legal Pluralism, and Human Rights from an Indigenous Perspective: The Approach by the Colombian Constitutional Court and the Inter-American Court of Human Rights’ (2014) 36 *Human Rights Quarterly* 722

Gómez Isa F, *La Declaración Universal de Derechos Humanos en su cincuenta aniversario: un estudio interdisciplinar* (Universidad de Deusto ed, Universidad de Deusto 1999)

Gómez Isa F, ‘The Decision by the Inter-American Court of Human Rights on the Awas Tingni vs. Nicaragua Case (2001): The Implementation Gap’ [2017] *The Age of Human Rights Journal* 67

Gómez Isa F and De Feyter K (eds), *International Human Rights Law in a Global Context* (University of Deusto 2009)

Goodhart M, ‘Neither Relative nor Universal: A Response to Donnelly’ (2008) 30 *Human Rights Quarterly* 183

Habermas J and Rehg W, *Between Facts and Norms: Contributions to a Discourse Theory of Law and Democracy* (Polity Press 2015)

Hannerz U, *Cultural Complexity: Studies in the Social Organization of Meaning* (Columbia Univ Press 1992)

Hesse-Biber SN and Leavy P (eds), *Approaches to Qualitative Research: A Reader on Theory and Practice* (Oxford University Press 2004)

Ibhawoh B, ‘Restraining Universalism: Africanist Perspectives on Cultural Relativism in the Human Rights Discourse’, *Human rights, the rule of law, and development in Africa* (University of Pennsylvania Press 2004)

Julia C, ‘Comunidad Indígena Sawhoyamaya: Historia de Lucha y Reivindicación Territorial En El Chaco Paraguayo’ (Movimiento Regional Por La Tierra 2014)
<<http://www.porlatierra.org/docs/7de6f97752b32890cf0487fef710c62c.pdf>> accessed 2 September 2018

Kidd SW, ‘Religious Case: A Case-Study amongst the Enxet of the Paraguayan Chaco’ (Masters, Durham University 1992) <<http://etheses.dur.ac.uk/6170/>> accessed 14 July 2018

- Kidd SW, 'Love and Hate among the People without Things : The Social and Economic Relations of the Enxet People of Paraguay' (Thesis, University of St Andrews 2000) <<https://research-repository.st-andrews.ac.uk/handle/10023/7281>> accessed 14 July 2018
- Kowalczyk AM, 'Indigenous Peoples and Modernity: Mapuche Mobilizations in Chile' (2013) 40 *Latin American Perspectives* 121
- Kvale S, *Interviews: An Introduction to Qualitative Research Interviewing* (Sage Publications 1996)
- Lévi-Strauss C, *Race and History* (Paris : UNESCO 1952)
<<http://archive.org/details/racehistory00levi>> accessed 14 July 2018
- Merry SE, *Human Rights and Gender Violence: Translating International Law into Local Justice* (2009)
<<http://www.myilibrary.com?id=253751&entityid=https://idp.warwick.ac.uk/idp/shibboleth>> accessed 26 May 2018
- Mutua M, *Human Rights: A Political and Cultural Critique* (Univ of Pennsylvania Pr 2008)
- Oré Aguilar G, 'The Local Relevance of Human Rights: A Methodological Approach' [2008] DEAS Working Paper Series from RePEc
- 'Organization of American States (OAS), American Convention on Human Rights, "Pact of San Jose"' (Inter-American 1969) <http://www.oas.org/dil/treaties_B32_American_Convention_on_Human_Rights.pdf> accessed 17 February 2018
- 'Paraguay' <<https://www.iwgia.org/en/paraguay>> accessed 6 January 2018
- 'Paraguay: An Unequal Land' (*New Internationalist*, 27 March 2018)
<<https://newint.org/columns/country/2018-03-27/country-profile-paraguay>> accessed 6 February 2018
- Patton MQ and Patton MQ, *Qualitative Research and Evaluation Methods* (3 ed, Sage Publications 2002)
- Preis A-BS, 'Human Rights as Cultural Practice: An Anthropological Critique' (1996) 18 *Human Rights Quarterly* 286
- 'Report of the Special Rapporteur on the Rights of Indigenous Peoples, Victoria Tauli-Corpuz. The Situation of Indigenous Peoples in Paraguay.' (UN Human Rights Council 2015) A/HRC/30/41/Add1
- 'Report of the Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People, Mr. Rodolfo Stavenhagen.' (2006) E/CN4/2006/78
- Rubin HJ and Rubin I, *Qualitative Interviewing: The Art of Hearing Data* (3rd ed, SAGE 2012)

- Sandelowski M, 'Focus on Qualitative Methods. Notes on Transcription' (1994) 17 *Research in Nursing & Health* 311
- Seidman I, *Interviewing as Qualitative Research: A Guide for Researchers in Education and the Social Sciences* (3rd ed, Teachers College Press 2006)
- Simons H, *Case Study Research in Practice* (SAGE 2009)
- 'Strategic Litigation Impacts Indigenous Peoples' Land Rights' (Open Society Justice Initiative 2017)
- Toro Huerta MI, 'Los Aportes de La Jurisprudencia de La Corte Interamericana de Derechos Humanos En La Configuración Del Derecho de Propiedad Colectiva de Los Miembros de Comunidades y Pueblos Indígenas' [2008] SELA (Seminario en Latinoamérica de Teoría Constitucional y Política) Papers
<http://digitalcommons.law.yale.edu/yls_sela/58> accessed 26 April 2018
- Trainor A and Graue E, *Reviewing Qualitative Research in the Social Sciences* (Routledge 2013) <http://www.123library.org/book_details/?id=92871> accessed 12 July 2018
- Ulrich G, 'Universal Human Rights: An Unfinished Project' in Kristen Hastrup (ed), *Human rights on common grounds: the quest for universality* (2001)
- 'UN General Assembly, Vienna Declaration and Programme of Action' (UN GAOR 1993) A/CONF.157/23
<<https://www.ohchr.org/Documents/ProfessionalInterest/vienna.pdf>> accessed 1 May 2018
- 'UNESCO Universal Declaration on Cultural Diversity' (UN Educational, Scientific and Cultural Organisation (UNESCO) 2001)
<http://www.unesco.org/new/fileadmin/MULTIMEDIA/HQ/CLT/pdf/5_Cultural_Diversity_EN.pdf> accessed 5 February 2018
- 'United National Declaration on the Rights of Indigneous Peoples' (2007) A/RES/61/295
- Walker N, 'Universalism and Particularism in Human Rights: Trade-Off or Productive Tension?' [2012] SSRN Electronic Journal
<<http://www.ssrn.com/abstract=2021071>> accessed 1 March 2018
- Wilson RA (ed), *Human Rights, Culture and Context: Anthropological Perspectives* (2nd pr, Pluto Press 1998)
- Witzel A and Reiter H, *The Problem-Centred Interview: Principles and Practice* (SAGE 2012)
- Yin RK, *Case Study Research: Design and Methods* (4th ed, Sage Publications 2009)

Case of the Mayagna (Sumo) Awas Tingni Community v Nicaragua (The Inter-American Court of Human Rights)

Case of the Sawhoyamaya Indigenous Community v Paraguay (The Inter-American Court of Human Rights)

The African Commission on Human and Peoples' Rights v Republic of Kenya [2017]
African Court on Human and Peoples' Rights 006/2012

Annex 1 – localising human rights case study process check list

4.1. The ‘Localising Human Rights’ Case Study: Phases and Methods

The table below outlines key components of a case study process (Yin, 2004; Doo- ley, 2002) complemented by key aspects of the methodologies used in the revised case studies. This table pairs each of the case study process’ phases with a description of the component

(action) and suggested sample methods derived from the bulk of qualitative methods available: A set of basic case study questions is proposed (Appendix C) drawing from the research project objectives.

The Local Relevance of Human Rights **IOB DISCUSSION PAPER 2008-04 • 19**



Table 1: Localising Human Rights Case Study Process

COMPONENT	DESCRIPTION/ METHODS/ TOOLS
I: FITTING METHODOLOGY TO THEORY	
<ul style="list-style-type: none"> • <i>Objective(s) of the case study research</i> 	<p><i>Overall objective:</i> To examine human rights experiences in light of ‘localising human rights’ theory. <i>Specific objectives:</i></p> <ul style="list-style-type: none"> • To examine how local communities use human rights to change their reality of poverty or marginalisation • To explore the relevance of the human rights action to the community (process and outcome) • To examine the impact of the action in the advancement of human rights.
<ul style="list-style-type: none"> • <i>Defining case study research questions</i> 	<ul style="list-style-type: none"> • A literature review to define and refine questions proposed by the LHR theory. • Formulating questions to describe and analyse who, what, where, when and how an event/ experience occurred.

	<ul style="list-style-type: none"> • A suggested set of questions can be found in Appendix B.
<ul style="list-style-type: none"> • <i>Selection of case(s)</i> 	<p><i>Selection criteria:</i></p> <ul style="list-style-type: none"> • The case represents a wider problem experienced by other local communities • The problem presented is a (direct or indirect) consequence of economic globalisation • The affected local community is involved in the human rights claim • There is a presence of NGOs and international actors • The case is geographically relevant for the LHR project (region particularly affected by economic globalisation) • Sufficient political space exists • The claim was formulated in human rights terms • The case is an ‘ex-post’ or ongoing experience
<ul style="list-style-type: none"> • <i>Organising the case study process</i> 	<ul style="list-style-type: none"> • Planning meeting(s) to discuss and agree upon theoretical framework and case study questions • Develop a research plan • Selecting and adapting methods and indicators • Selecting tools for organising and managing data • Learning interview techniques and managing issues of language, cultural codes and confidentiality • Ensuring team awareness about specific methods and research guidelines when dealing with gender, indigenous peoples or children issues • Adapting questions (checklist) to the local context (rephrase where needed) • Determining budget implications (travel costs, experts’ assistance, translations, other specialised assistance) • Developing time planning sheets • Indicators should be built around the case study questions agreed upon the project’s inception • Addressing issues of interdisciplinary (concepts and methods)

Koen De Feyter, 'Localizing Human Rights' [2006] IDEAS Working Paper Series from RePEc 19–20.

Annex 2 – Example Interview guides

Preguntas: Comunidad/ONGs

1. ¿Cuales piensa que son los aspectos que componen (o forman) la cultura de la comunidad Sawhoyamaxa?

Cuales son los puntos mas importantes de tu cultura?

- Familia (+crianza)
- Educación (+lengua)
- Alimentación
- Salud
- Espiritualidad
- Relaciones sociales
- Artesanía
- Autosuficiencia

2. Formal: Que importancia tiene la tierra en su cultura, y como afecta a la comunidad?

¿Cuál es la relación entre la tierra y la cultura para la comunidad Sawhoyamaxa?

Que tipo de relación tiene la comunidad Sawhoyamaxa (o su comunidad) con la tierra?

3. ¿Que practicas/costumbres culturales se realizaban/practicaban antes de la decisión de la Corte/ antes de que la comunidad volvió a sus tierras?

- en las tierras
- cuando la comunidad fue separada entre estancias etc.
- En la ruta

4. ¿Cuáles eran sus expectativas, como esperaba que la sentencia/ la devolución de sus tierras pudiera mejorar la situación de los Sawhoyamaxa en cuanto a su posibilidad de vivir su cultura? ¿cuál era el objetivo de la comunidad reclamando sus tierras?

5. ¿Cuál es la situación actual en cuanto a su cultura? Diría que aun existen limitaciones? Y aspectos que hayan evolucionado favorablemente? Finalmente, han conseguido lograr sus objetivos?

6. ¿Como afecto la sentencia/la devolución de sus tierras a la comunidad?

7. ¿Cómo ve el futuro para su comunidad (y o cultura)? ¿Cómo piensa usted que la situación actual podría mejorarse?

Preguntas: Actores externos

1. ¿Me podría hablar sobre porque cree que la cultura tuvo un papel tan importante en la decisión sobre el caso Sawhoyamaxa?
2. ¿Actualmente cual es la situación de la comunidad y la relación con la posibilidad de vivir su cultura? Diría usted que todavía existen limitaciones con la misma? Y en que aspectos piensa que han mejorado?
3. (¿Cómo piensa que la resolución de la sentencia ha afectado la posibilidad de vivir la cultura para la comunidad?)
4. La cultura tuvo un papel clave en la decisión de la corte sobre el caso Sawhoyamaxa.

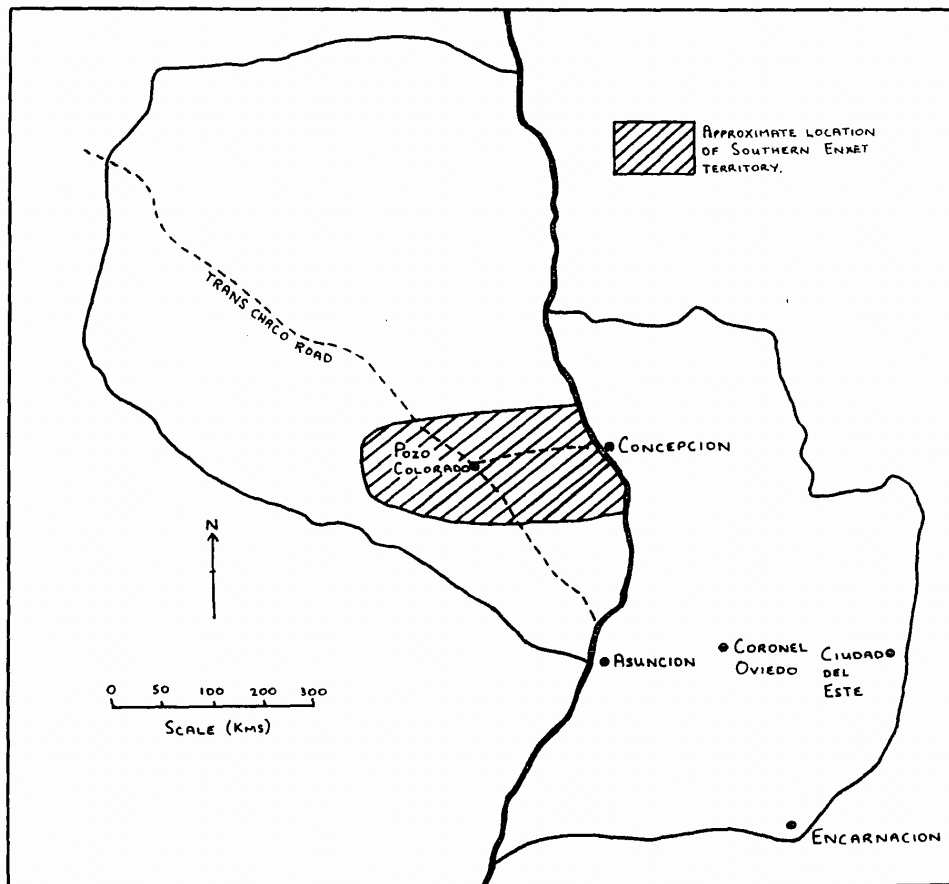
¿Que función (o importancia) ha tenido la cultura a la hora de implementar la sentencia?

¿El reconocimiento de la conexión que tiene la cultura de los Sawhoyamaxa con sus tierras, ha tenido efecto en el proceso de cumplimiento de la sentencia?

5. A través de mi investigación he podido conocer que a día de hoy el proceso de cumplimiento de la sentencia no se ha llevado a cabo. Cuales diría usted que podrían ser las razones que hayan impedido la implementación completa de la sentencia (o de la misma)?
6. ¿Qué estrategias llevaran a cabo para asegurar el cumplimiento de la sentencia para
 - superar las limitaciones/problemas que menciono antes
 - que la comunidad pueda vivir su cultura?

Annex 3 - Map showing the location of the Southern Enxet territory within which Sawhoyamaxa's land is located.

Map 1.1. Paraguay, Showing Location of Southern Enxet Territory



Stephen William Kidd, 'Religious Case: A Case-Study amongst the Enxet of the Paraguayan Chaco' (Masters, Durham University 1992) 8
<<http://etheses.dur.ac.uk/6170/>> accessed 14 July 2018.

Annex 4 – Table of interviewees

Name of interviewee	Organisation	Role/relevance
Elsa Ayala	Sawhoyamaxa Indigenous Community	Community member and witness for the IACtHR case
Doña Aparicia	Sawhoyamaxa Indigenous Community	Community member
Doña Tomaso	Sawhoyamaxa Indigenous Community	Community member
Doña Belén	Sawhoyamaxa Indigenous Community	Community member
Leonardo González	Sawhoyamaxa Indigenous Community	Community Leader
Don Marciano	Sawhoyamaxa Indigenous Community	Shaman of the Community
Julia Cabello	<p>TierraViva - TierraViva has been working with promoting and defending the rights of indigenous communities in the Paraguayan Chaco region since 1994. The NGO filed Sawhoyamaxa's petition in front of the Inter-American Commission of Human Rights and represented the Community in front of the IACtHR. The organisation organised advocacy campaigns along with international NGO's to support the case and have been accompanying Sawhoyamaxa since. They continue to provide legal representation today in the number of trials still on-going.</p>	<p>Lead lawyer in the litigation team at TierraViva for the Sawhoyamaxa case, continues to represent the Community.</p>
Oscar Ayala	TierraViva	<p>Previous Director of TierraViva continues to be part of their litigation team. Worked closely with Sawhoyamaxa during their claim.</p>
Rodrigo Villagra	None	<p>President of TierraViva and leading Anthropologist specialised in the Enxet people. Worked closely with the community during their territorial claim. Provided</p>

		evidence for the IACtHR case
Andrés Ramírez	Human Rights Department of the Supreme Court, Paraguay (Dirección de Derechos Humanos de la Corte Suprema de Justicia de Paraguay)	Director of the Human Rights Department of the Supreme Court, Paraguay (Dirección de Derechos Humanos de la Corte Suprema de Justicia de Paraguay). Previously worked for TierraViva as part of the litigation team for Sawhoyamaxa.
Ester Prieto	Various	Specialist on Indigenous issues, works with the Supreme Court and the Government. Has extensive knowledge of the Sawhoyamaxa case and represented the Government at follow up consultations with the IACtHR. (Interview not recorded)

Annex 5 – Consent form

**FORMULARIO DE PERMISO
ENTREVISTA**

FECHA _____

LUGAR _____

Por este medio otorgo los derechos a GIOVANNA PARK, para cualquier finalidad académica o educativa que determine sobre las grabaciones, transcripciones y giovacontenidos derivados de la entrevista que me realizó el día de hoy.

Si quiere que su testimonio sea anónimo por favor marque aquí:



Firma del (la) entrevistado (a)

Nombre y firma del (la) entrevistador (a)