



Community of San Mateo de Huanchor v. Peru

Report No. 69/04, Case 504/03, October 15, 2004; OEA/Ser.L/V/II.122 Doc. 5 rev. 1 at 487, 23 February 2005

Country: Peru

Region: Americas

Year: 2004

Court: Inter-American Commission on Human Rights Inter-American Commission on Human Rights

Health Topics: Child and adolescent health, Environmental health

Human Rights: Freedom from discrimination, Freedom of movement and residence, Right to bodily integrity, Right to family life, Right to life, Right to participation, Right to property

Facts

This report addresses the admissibility of a petition that alleged Peru failed to fulfill its obligations under the American Convention on Human Rights (the Convention). The Petitioner was the National Coordinator of Communities of Peru Affected by Mining (CONACAMI), representing members of the Community of San Mateo de Huanchor, in their claim that the State of Peru is responsible for the health effects, among others, on the community from the environmental pollution produced by a field of toxic waste sludge originating in the mine owned by the Lizandro Proano S.A. Mining company.

Petitioner claimed the mining company violated Peruvian law addressing mining concessions. The company did not observe provisions requiring submittal of an environmental impact assessment study on the effects of the mining, and it was not authorized by municipal permit from the mayor. As a result, the General Mining Department halted operations at the dump several months after they began. However, at the request of the company, operations were authorized to resume a year and some months later.

Petitioner cited a number of studies by state and academic institutions that observed high concentrations of pollutants such as lead, zinc, arsenic, iron, and copper in the dump and in farming areas in the community. One study demonstrated that 67.8% of the population had lead content levels over permissible limits; 24.9% had cadmium levels over permissible limits; and 19% had mercury levels over permissible limits. Another study found that the majority of the children in the community suffered from chronic dermatitis, liver dysfunction, sensorineural hearing loss, and chronic malnutrition. Another study found that community members suffered a form of dermatological disease and concluded that the appearance of skin cancer would be imminent if the dump was not relocated.

Petitioner claimed that farming activities in the area had been detrimentally affected by the high content of pollutants found in the vegetation and the water.

Petitioner claimed that the pollution affected not only material values and health, but also spiritual values associated with the community's relationship with the land and environment.

Petitioner claimed domestic judicial remedies available to the affected community were ineffective and inequitable. They mentioned the slowness of the judicial system and the lack of financial resources needed to fund an adequate defense of the community's rights, which were out of proportion compared to those of the company. Petitioners also claimed inequitable treatment by the state as a result of state policies aimed at strengthening national mining activities.

In 2001, the Ministry of Energy and Mines ordered the shutdown and relocation of the dump. The company failed to comply with the administrative order and was fined 210 tax units in 2003. As of the time of the petition, the dump had not been shutdown or relocated. Petitioner alleged Peru failed to enforce the order in an attempt to avoid establishing an adverse precedent that other communities suffering from pollution could utilize.

Petitioner alleged violations of articles 4 (right to life), 5 (right to humane treatment), 7 (right to personal liberty), 8 (right to a fair trial), 11 (right to privacy), 16 (freedom of association), 17 (rights of the family), 19 (rights of the child), 21 (right to property), 22 (freedom of movement and residence), 23 (right to participate in government), 24 (right to equal protection), 25 (right to judicial protection), and 26 (progressive realization) of the Convention.

Peru argued that domestic remedies had not been exhausted and that it had taken significant steps toward shutting down and relocating the dump. It noted that the Attorney General charged the general manager of the company with crimes against the environment and requested four years of imprisonment and payment of civil damages.

Peru noted that the Political Constitution of 1979 recognized the right to live in an environment that is healthy, ecologically balanced, and suitable for the development of life and preservation of landscape and nature. It added that the Political Constitution of 1993 expressly recognized the fundamental right of persons to enjoy a balanced environment that is suitable to live their lives. Peru argued that the existence of these provisions proved it accorded high priority to environmental rights.

Decision and Reasoning

The Commission stated that the petition was admissible as to violations of Articles 4 (right to life), 5 (right to humane treatment), 8 (right to a fair trial), 17 (rights of the family), 19 (rights of the child), 21 (right to property), 25 (right to judicial protection), and 26 (progressive realization) of the Convention.

The petition, however, was inadmissible as to violations of Articles 7 (right to personal liberty), 11 (right to privacy), 16 (freedom of association), 22 (freedom of movement and residence), 23 (right to participate in government), and 24 (right to equal protection) of the Convention.

The Commission also examined whether effective domestic remedies were available to the Petitioners. It observed that the domestic remedies presented had not been effective. It noted that administrative decisions were not observed and only pecuniary sanctions had been imposed. It remarked that after more than three years the dump continued to cause damage to the health of the population of San Mateo de Huanchor. It also noted that the effects of the pollution were becoming more acute over time. It observed that more than three years had elapsed since criminal proceedings aimed at punishing crimes committed against the environment were filed and no definitive verdict had been pronounced.

Decision Excerpts

"The Commission considers that the remedies that were filed with the administrative and judicial authorities for the purpose of legally safeguarding the rights that were violated to the detriment of the inhabitants of the San Mateo de Huanchor have turned out to be ineffective." Para. 61.

â€œThe Court has pointed out that the Stateâ€™s responsibility does not end when competent authorities issue a decision or judgment, because the State is also bound to guarantee the means whereby these judgments can be definitively implemented.â€• Para. 62.

"The Commission considers that the events that were denounced with regard to the effects of the environmental pollution of the Mayoc sludge, which has created a public health crisis in the population of San Mateo de Huanchor, if proven, could be characterized as a violation of the right to personal security, right to property, rights of the child, right to fair trial and judicial protection and the progressive development of economic, social and cultural rights enshrined in Articles 4, 5, 8, 17, 19, 21, 25, and 26 of the American Convention, related to Articles 1(1) and 2 of the same instrument. Likewise, the Commission consider that, although the petitioners denounce violation of Articles 7, 11, 16, 22, 23 and 24 of the Convention, from the brief and the facts that were denounced sufficient elements cannot be drawn to characterize a violation of the above-mentioned articles, for which reason they are declared inadmissible. Furthermore, there is no evidence of the absence of grounds or inadmissibility in the petition being submitted. As a consequence, the Commission considers that the requirements set forth in Article 47(b) and (c) of the American Convention have been met." Para. 66.