



Mossville Environmental Action Now v. United States

Report No. 43/10, Petition 242-05, March 17, 2010

Country: United States

Region: Americas

Year: 2010

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

Health Topics: Chronic and noncommunicable diseases, Environmental health

Human Rights: Freedom from discrimination, Right to a clean environment, Right to family life, Right to health, Right to life, Right to property

Facts

This report addresses the admissibility of a petition that alleged the United States failed to fulfill its obligations under the American Declaration on the Rights and Duties of Man (the Declaration) and the American Convention on Human Rights (the Convention), including protection of the right to health and equality before law.

Mossville, Louisiana is a historic community founded in the 1790's by African-Americans. Petitioners claimed the community sustained itself by fishing, farming and hunting, while developing cultural and religious traditions based on preserving environmental conditions. Since the 1930's, the U.S. has authorized construction of fourteen industrial facilities used for handling toxic substances in close geographic proximity to the community. Petitioners alleged this occurred as a result of generous industrial tax incentives and zoning regulations, and by the enactment of environmental and public health laws that failed to require safe distances between hazardous industrial development and residential areas. Petitioners further claimed the U.S. presented misleading information regarding the environmental pollution produced by the facilities.

Petitioners presented evidence showing that, as a result of exposure to chemicals produced by the facilities, 84 percent of the Mossville residents surveyed suffered from nervous system problems; 71 percent had cardiovascular problems; 57 percent had skin problems; and many experienced mental health problems. Petitioners also noted that the U.S. Agency for Toxic Substances and Disease Registry found that the alleged victims had an average concentration of dioxins in their blood three times higher than the national average.

Petitioners noted that the facilities that produced the greatest amount of pollution began operating at a time when racial discrimination was openly accepted by state governments in the southern U.S. At this time, African-Americans living in Mossville did not have a legal right to vote. Petitioners further argued that although racist government policies have since been abolished, Mossville residents are still provided inferior and unequal environmental protection from federal regulatory agencies.

Petitioners contended that the U.S. was guilty of "environmental racism," and that it had violated articles I (right to life, liberty and personal security), II (right to equality before the law), V (right to protection of honor, personal reputation, and private and family life), IX (Right to inviolability of the home), XI (right to the preservation of health and to well-being), and XXIII (Right to property) of the Declaration. Petitioners also claimed the U.S. violated Mossville residents' right to privacy included in the right to protection of honor, personal reputation, and private and family life under article V.

Decision and Reasoning

The Commission declared petition admissible with respect to the alleged violations of articles II and V of the Declaration, however declared the petition inadmissible with respect to article I, IX, XI, and XXIII of the Declaration.

The Commission first examined whether the petition admissible as to the right to equality under the Declaration was admissible. The Commission stated that the right to equal protection under international human rights law has been interpreted as prohibiting not only intentional discrimination, but also any distinction, exclusion, restriction or preference which has a discriminatory effect. As such, the allegations contained in the petition, if proven, could characterize a violation of the right to equality before the law under article II of the Declaration.

The Commission then examined whether the petition was admissible as to the right to privacy under the Declaration, which included in the right to protection of honor, personal reputation, and private and family life. The Commission indicated that allegations concerning the rights to privacy cannot be regarded as manifestly out of order within the meaning of article 34 of the Inter-American Commission on Human Rights Rules of Procedure. Moreover, when interpreting and applying the Declaration, it is necessary to consider its provisions in the context of the international and Inter-American human rights systems more broadly, and in the light of specific developments in the field of international human rights law. As such, Mossville residents' right to privacy might have been violated as a result of the significant environmental pollution caused by the facilities.

The Commission then looked into whether the petition was admissible as to the right to inviolability of the home article IX of the Declaration. It found that the Petitioners did not present specific facts or arguments to demonstrate how the alleged facts implicate the right to inviolability of the home.

The Commission also examined whether the petition was admissible as to the right to property under article XXIII of the Declaration. With respect to this the Commission found that the Petitioners did not present legal arguments or evidence as to a violation of the right to property, nor did they include it in their third submission.

Finally, the Commission investigated whether the petition was admissible as to the right to life under article I and the right to the preservation of health and to well-being under article XI of the Declaration. Here the Commission stated that allegations of violations of the right to life and the right to health were inadmissible because it was not evident that domestic remedies had been exhausted.

Decision Excerpts

“The IACHR is quite conscious of the distinction between the actions taken by the industrial facilities, and those taken by the State. As indicated in this report, the petitioners claim that the State's approval and facilitation of the exploitation of 14 polluting industrial facilities in and around Mossville is the consequence of policies bearing a discriminatory impact, and resulted in severe health problems for the residents of that city in violation of their right to privacy and to the inviolability of the home. The IACHR finds that a settlement between one of the 14 companies and some of the Mossville residents, which resulted in monetary compensation and the purchase of properties, does not illustrate the existence of an effective remedy against the conduct of the State itself in regulating, or failing to properly control such activities.” Para. 31.

“In the present case, the petitioners allege that the issuance of environmental permits to industrial facilities by the U.S. government and the resulting environmental pollution has a disproportionate impact upon the Mossville residents as African-Americans. The State argues that there is no enforceable mandate under the American Declaration, absent a clear showing of intentional discrimination, to prevent the installation of toxic and hazardous facilities in proximity to residential areas, or to remedy practices that allegedly impose racially disproportionate pollution burdens. The violation of the right to equality in the present case occurs, according to the petitioners, by affording unequal environmental protection based on race without any reasonable justification; creating a pattern of environmental racism that serves no legitimate aim; and establishing inadequate and ineffective means for achieving environmental protection, with knowledge that people of color bear the significantly disproportionate burden of such inadequate and ineffective measures. The IACHR recalls that the right to equal protection under international human rights law has been interpreted as prohibiting not only intentional discrimination, but also any distinction, exclusion, restriction or preference which has a discriminatory effect and that ‘the notion of equality before the law set forth in the American Declaration relates to the application of substantive rights and to the protection to be given to them in the case of acts by the State or others.’ Without prejudging on the merits of the petition, the IACHR finds that the allegations contained in the petition, if proven, could characterize a violation of the right to equality before the law, as enshrined in Article II of the American Declaration.” Para. 42.