



Sawhoyamaxa Indigenous Community v. Paraguay

Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 146 (Mar. 29, 2006).

Country: Paraguay

Region: Americas

Year: 2006

Court: Inter-American Court of Human Rights Inter-American Court of Human Rights

Health Topics: Child and adolescent health, Diet and nutrition, Health care and health services, Medicines, Water, sanitation and hygiene

Human Rights: Right to due process/fair trial, Right to property

Facts

The Sawhoyamaxa, an indigenous community in Paraguay brought the case against the Paraguayan government for failing to ensure their ancestral property right. The Sawhoyamaxa's claim for territorial rights had been pending since 1991. The lands at issue constituted their traditional habitat suitable for their subsistence activities, consisting of hunting, fishing, and gathering. The lands claimed were at the time owned by corporations, but were within the traditional lands the Sawhoyamaxa occupied prior to the non-indigenous possession of such lands in the 19th century. The State's failure to recognize the Sawhoyamaxa's title and possession of their lands had negative implications on their nutrition and health, and thus threatened their "survival and integrity." Waiting for the government to resolve their land claim, the Sawhoyamaxa were forced to live along the national road under extreme poverty, in non-hygienic conditions, and deprived from their traditional means of subsistence and basic services, such as access to health care and clean water. As a result of their poor living conditions and the State's failure to take appropriate preventative measures, the Sawhoyamaxa experienced a number of deaths, particularly of children and the elderly, from diseases and epidemics, such as tetanus, pneumonia, measles, bronchitis, serious dehydration, cachexia, and enterocolitis.

Decision and Reasoning

The Court found the State of Paraguay in violation of Art. 4 (right to life) of the American Convention on Human Rights for failing to adopt the necessary measures to "prevent or avoid risking" the right to life of the Sawhoyamaxa Community. The Court held that the right to life is a fundamental and inalienable right and "a pre-requisite for the enjoyment of other human rights." Therefore, the right to life cannot be restricted, including in times of war, public danger or other threats to the independence or security of the State.

Decision Excerpts

¶ 150-51: "The right to life is a fundamental human right, which full enjoyment is a pre-requisite for the enjoyment of the other human rights. If this right is not respected, all other rights do not have sense. Having such nature, no restrictive approach of the same is admissible. This right forms part of the essential nucleus, since it is consecrated as one of the rights that cannot be suspended in cases of war, public danger or any other threat to the independence or security of a State Party. By virtue of this fundamental role that the Convention assigns to this right, the States have the duty to guarantee the creation of the conditions that may be necessary in order to prevent violations of such inalienable right."

¶ 153: "States must adopt any measures that may be necessary to create an adequate statutory framework to discourage any threat to the right to life; to establish an effective system of administration of justice able to investigate, punish and repair any deprivation of lives by state agents, or by individuals; and to protect the right of not being prevented from access to conditions that may guarantee a decent life, which entails the adoption of positive measures to prevent the breach of such right."

¶ 154: "[W]ithin the framework of the American Convention, the international responsibility of States arises at the moment of the violation of the general obligations embodied in Articles 1(1) and 2. From these general obligations special duties are derived that can be determined according to the particular needs of protection of the legal persons, whether due to their personal conditions or because of the specific situation they have to face, such as extreme poverty, exclusion or childhood."

¶ 155: "[A] State cannot be responsible for all situations in which the right to life is at risk. Taking into account

the difficulties involved in the planning and adoption of public policies and the operative choices that have to be made in view of the priorities and the resources available, the positive obligations of the State must be interpreted so that an impossible or disproportionate burden is not imposed upon the authorities. In order for this positive obligation to arise, it must be determined that at the moment of the occurrence of the events, the authorities knew or should have known about the existence of a situation posing an immediate and certain risk to the life of an individual or of a group of individuals, and that the necessary measures were not adopted within the scope of their authority which could be reasonably expected to prevent or avoid such risk."

Â¶ 171: "[M]ost of the Community members that died were boys and girls under 3 years of age, and the causes of their deaths range from enterocolitis, dehydration, cachexia, tetanus, measles, and respiratory illnesses, such as pneumonia and bronchitis; all of them are reasonably foreseeable diseases that can be prevented and treated at a low cost."

Â¶ 173: "The Court does not accept the State argument regarding the joint responsibility of the ill persons to go to the medical centers to receive treatment, and of the Community leaders to take them to such centers or to communicate the situation to the health authorities. [T]he provision of goods and health services did no longer specifically depend on the individual financial capacity of the alleged victims, and therefore, the State should have taken action contributing to the provision of such goods and services. That is to say, those measures which the State undertook to adopt before the members of the Sawhoyamaxa Community were different, in view of their urgent nature, from those that the State should adopt to guarantee the rights of the population and of the indigenous communities in general."

Â¶ 177: "As regards to the right to life of children, the State has, in addition to the duties regarding any person, the additional obligation to promote the protective measures referred to in Article 19 of the American Convention, which states the following: "[E]very minor child has the right to the measures of protection required by his condition as a minor on the part of his family, society, and the state." Thus, on the one hand, the State must undertake more carefully and responsibly its special position as guarantor, and must adopt special measures based on the best interest of the child. The aforesaid cannot be separated from the likewise vulnerable situation of the pregnant women of the Community. States must devote special attention and care to protect this group and must adopt special measures to secure women, specially [sic] during pregnancy, delivery and lactation, access to adequate medical care services."