



Kichwa Peoples of the Sarayaku Community v. Ecuador

Case No. 12.465; Series C No. 245, June 27, 2012

Country: Ecuador

Region: Americas

Year: 2012

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

Health Topics: Diet and nutrition, Environmental health, Health care and health services, Medicines, Violence

Human Rights: Freedom of expression, Freedom of movement and residence, Right to bodily integrity, Right to due process/fair trial, Right to liberty and security of person, Right to life, Right to participation, Right to property

Facts

This case concerned the Kichwa nation of the Ecuadorian Amazon, which encompassed two Peoples who shared the same linguistic and cultural tradition.

The State of Ecuador had granted a private oil company a permit to carry out oil exploration and exploitation of activities in the ancestral territory of the Kichwa nation. The State did not consult the Sarayaku People and did not obtain their consent for the permit. The Sarayaku People obtained 90% of their nutritional needs from their land in terms of collective farming, hunting, fishing, and gathering. Only the remaining 10% of their nutritional needs came from outside the community. Their land was therefore important to the community in terms of subsistence as well as spirituality. Nonetheless, Ecuador signed a contract with a private company in 1996 for oil exploration and exploitation in an area of the Amazon inhabited by the Sarayaku people, as well as other indigenous groups.

The Sarayaku People alleged violations of their right to consultation, to indigenous communal property, to cultural identity (Article 21 of the American Convention on Human Rights (‘‘Convention’’)), as well as to the right to life and personal integrity under Articles 4(1) and 5(1) of the Convention. They also alleged a violation of the right to a fair trial and to judicial protection (Articles 8(1) and 25 of the American Convention). The Sarayaku people alleged the State allowed the burial of explosives in their territory, and that this constituted a violation of the right to life and survival of its members, and had threatened the Peoples’™ right to preserve and transmit their cultural heritage. The detonation of explosives had also destroyed much of the land and its resources which was a major issue for the Sarayaku people due to their heavy reliance on the land for nutritional needs as well as their sacred connection with the land.

Decision and Reasoning

The Court held that the State was responsible for endangering the rights to life and physical integrity of the Sarayaku Peoples, in violation of Articles 4(1) and 5(1) of the Convention.

The Court was particularly concerned with the fact that over 1400 kg., or high-powered explosives, were placed in Sarayaku territory and the fact that the presence of such explosives caused the Sarayaku people to declare the area a restricted zone for safety reasons, thereby prohibiting access to it. This action had great consequence for the Sarayaku People considering its role as a sacred place and an important hunting ground. Not only was the Peoples’™ physical security in question, but the situation has created a ‘‘permanent situation of risk and threat to the life and physical integrity of its members.’’

The Court also held that the State had a duty to provide effective judicial remedies to the victims, that it was responsible for the violation of the rights to consultation, to indigenous communal property, and to cultural identity.

Decision Excerpts

‘‘In this case, the oil company, with the acquiescence and protection of the State, cleared trails and planted nearly 1400 kg of pentolite explosives in Block 23, which includes the Sarayaku territory. Therefore, this has constituted a clear and proven risk, and it was the State’s™ responsibility to deactivate it, as ordered in the provisional measures. In other words, the State’s™ non-compliance with its obligation to guarantee the

Sarayaku Community's right to communal property by allowing explosives to be placed on its territory, has created a permanent situation of risk and threat to the life and physical integrity of its members. Para. 248.

Furthermore, with respect to indigenous people, it is crucial that the States grant effective protection that allows for the distinct characteristics of indigenous peoples, their economic and social situation, as well as their special vulnerability, customary law, values, traditions and customs. Para. 264.

As noted previously, the consultation must be informed, in the sense that indigenous peoples must be aware of the potential risks of the proposed development or investment plan, including the environmental and health risks. Para. 208.

Copyright © 2015 www.GlobalHealthRights.org