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Updates from the Regional Human Rights Systems

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UPDATES FROM THE REGIONAL HUMAN RIGHTS SYSTEMS

AFRICA

THE AFRICAN HUMAN RIGHTS SYSTEM began to take shape under the Organization of African Unity (OAU), which was founded in 1963. The African Union (AU) replaced the OAU in July 2001 following the ratification of the AU's Constitutive Act. The AU has dominion over three mechanisms responsible for enforcing human rights treaties signed by member states. The African Charter on Human and Peoples' Rights (Charter) (entered into force in 1986) established the African Commission (Commission) on Human and Peoples' Rights, which is responsible for hearing cases brought against States Parties to the treaty. The African Charter on the Rights and Welfare of the Child (entered into force in 1999) created the African Committee on the Rights and the Welfare of the Child to enforce compliance of that treaty. Finally, the Protocol on the Establishment of an African Court on Human and Peoples' Rights (entered into force in January 2004) established a court for enforcement of the African Charter on Human and Peoples' Rights. At the time of publication, the African Court on Human and Peoples' Rights was not yet operational.

Under Article 59 of the African Charter on Human and Peoples' Rights, the Assembly of Heads of States and Governments of the African Union must grant its permission before decisions on human rights disputes (Communications) brought before the Commission can be publicly released. The following is a summary of recently released Communications from the Commission's 35th Ordinary Session held in Banjul, Gambia from May 21 to June 4, 2004. The Communications summarized below were published by the Centre for Human Rights at the University of Pretoria in South Africa.

BAH OULD RABAH V. MAURITANIA

In a 6-1 decision, the Commission ruled that Bah Ould Rabah and his family were wrongfully deprived of their ancestral home after the death of their mother, a former slave. The alleged property owner, the former slave owner of the mother, produced documents to prove that the mother had twice donated the land to him, once in 1971 and again in 1972. The 1972 donation was allegedly to secure her daughter's freedom from slavery. Although Mauritania

outlawed slavery by decree in 1981, and memorialized this decree in the country's Constitution in 1991, the local court ruled in favor of the alleged owner and the Mauritanian Supreme Court upheld that decision.

In its decision, the Commission noted that "the consequences of slavery still persist" in Mauritania despite the official government ban on the practice. The Commission stated that Bah Ould Rabah succeeded in creating doubt as to the authenticity of the donation of land his mother allegedly made to her "owner." The Commission held that the failure to prove a specific reason why a mother would deny her children the right of inheriting her land "is not in conformity with the protection of the right to property" under Article 14 of the African Charter. The Commission called upon Mauritania to "persevere in [its] efforts so as to control and eliminate all offshoots of slavery."

ODJOURIBY COSSI PAUL V. BENIN

The Commission ruled that the Government of Benin violated Article 7(1)(d) of the Charter by failing to decide a property dispute brought by Mr. Odjouoriby Cossi Paul in a timely manner. Mr. Odjouoriby filed an appeal in September 1995 with the Benin Court of Appeals. The Court of Appeals failed to adjudicate the case for 10 years. The Commission ruled that the inaction on the claim, including the Court's failure to respond to inquiries from the Commission, constituted undue delay in violation of the African Charter's right to a trial within a reasonable time. The Commission requested that the Republic of Benin take measures to rectify the delay and urged the Court to compensate Mr. Odjouoriby for damages he suffered due to the delay. The Commission refused to rule on the merits of the property dispute because the case has not received final adjudication in the national courts.

SUBSEQUENT COMMISSION SESSIONS

The 36th Ordinary Session of the African Commission on Human and Peoples' Rights took place in Dakar, Senegal, from November 23 to December 7, 2004. During the session, the Commission adopted a resolution outlining the mandate of the Special Rapporteur on Freedom of Expression in Africa. The Commission also appointed Commissioner

Andrew Chigovera, a former prosecutor and Attorney General from Zimbabwe, as the Special Rapporteur for a six month period that will end at the same time as his term on the Commission.

Due to the inability to complete all activities during the scheduled session, the Commission decided to hold an Extra Ordinary Session from March 15-19, 2005, in Addis Ababa, Ethiopia. The 37th Ordinary Session of the African Commission on Human and Peoples' Rights was held from April 27 to May 11, 2005, in Banjul, Gambia.

BENIN

A U.S. Federal District Court ordered the Titan Corporation to pay criminal and civil fines totaling \$28.5 million for violating the Foreign Corrupt Practice Act (FCPA), which bars American companies from bribing foreign officials. Titan, a U.S. corporation, admitted to bribing government officials in Benin and funneling over \$2 million into President Mathieu Kerekou's re-election campaign in 2001. Titan, a California-based defense and telecommunications firm, paid the money in hopes that the government of Benin would increase the fees the company received for managing a telephone network project in the country. Shortly after President Kerekou won re-election, Titan's fee quadrupled to an estimated \$9.1 million.

The \$28.5 million is the largest fine ever levied on an American company under the FCPA. The U.S. Attorney prosecuting the case stated that the decision put U.S. corporations on notice that bribing foreign officials will not be tolerated.

Titan Wireless, the unit of the company that operated in Benin, ceased operations in 2002. It is not known whether President Kerekou was aware of the bribes, and the United States has no plans to bring charges against him.

ZIMBABWE

Parliamentary elections were held in Zimbabwe on March 31, 2005, despite warnings from Zimbabwean civic groups that violence and intimidation would likely keep many voters away from the polls.

Leading up to the elections, officials from the main opposition party, the Movement for Democratic Change (MDC), claimed Zimbabwean government soldiers attacked several of the party's candidates as they campaigned on at least two separate occasions in February. An MDC spokesman alleged that while the soldiers were beating and kicking MDC candidate Gabriel Chiwara and his campaign manager, they accused the men of "selling the country to the British." The police are said to be investigating the claims.

Gordon Moyo of the Bulaweyo Agenda, a civic education group in Zimbabwe, asserted that political violence, including the arbitrary arrest of opposition officials, is on the rise in urban areas. Mr. Moyo also stated that many people feared they might lose food aid if they voted for the opposition. Zimbabwe continued to experience severe food shortages and the Famine Early Warning System Network estimated that five million Zimbabweans are in need of food aid.

Dr. Reginald Matchaba-Hove, chairman of the Zimbabwe Election Support Network (ZESN), told the United Nation's IRIN news agency prior to the elections that intimidation, coupled with the experiences of the last election, would prevent many opposition supporters from voting. "They would rather not go to vote than vote and face the recriminations. Past experience has taught them that such threats are eventually carried out. . . . The penalty for voting for the opposition can be an expulsion from the village, physical violence, withdrawal from the local food aid registers, or all of them combined."

The New York-based Committee to Protect Journalists expressed concern about the government's intimidation of independent reporters. Government investigators, alleging espionage, raided the offices of three freelance reporters who contribute to the Associated Press, the London Times, and the Bloomberg news agency. The Broadcasting Authority of Zimbabwe announced on February 16, 2005, that all parties and candidates would have equal access to government media. Some opposition groups claimed that although they were gaining greater access, it paled in comparison to that of the ruling Zanu-PF party.

EUROPEAN COURT OF HUMAN RIGHTS

THE EUROPEAN COURT of Human Rights (Court) was established in 1959 by the European Convention for the Protection of Human Rights and Fundamental Freedoms (Convention). The Court is charged with

enforcing the obligations entered into by those states who are party to the Convention. Any State Party or individual claiming to be a victim of a Convention violation may lodge a complaint with the Court. In its decisions, the Court takes into account the various legal systems of the Contracting States.

KHASHIYEV AND AKAYEVA V. RUSSIA; ISAYEVA, YUSUPOVA AND BAZAYEVA V. RUSSIA; ISAYEVA V. RUSSIA

On February 24, 2005, the Court delivered its judgment in a series of cases lodged in 2000 by six Chechens who accused the Russian army of committing serious abuses, including torture and extrajudicial killing, in its on-going conflict with the self-proclaimed breakaway Republic of Chechnya. The Court's decisions marked the first time an international court has found Russia guilty of serious human rights violations during the course of the decade-long conflict.

In each case, the applicants alleged that the Russian government's attempts to investigate and prosecute the alleged crimes were ineffective. The case of *Khashiyev and Akayeva v. Russia* concerned allegations that members of the Russian army in Grozny tortured and executed the applicants' relatives. At the end of January 2000, the bodies of Mr. Khashiyev's brother and sister, two of his nephews, and Ms. Akayeva's brother were found with numerous gunshot wounds. The Russian government began a criminal investigation in May 2000, which was suspended and reopened several times, but never identified those responsible for the killings. The case of *Isayeva, Yusupova and Bazayeva v. Russia* accused the Russian military of the indiscriminate bombing of civilians leaving Grozny on a highway on October 29, 1999. As a result of the bombing, Ms. Isayeva and Ms. Yusupova were wounded, Ms. Isayeva's two children and daughter-in-law were killed, and Ms. Bazayeva's car containing her family's possessions was destroyed. The government opened a criminal investigation into the bombardment in May 2000, but later closed the investigation when a Russian court found that the military actions were legitimate and proportional to the circumstances. An appeal of this decision is still pending before a military court. The case of *Isayeva v. Russia* also accused the Russian military of indiscriminately bombing the Chechen village of Katyr-Yurt on February 4, 2000, resulting in the deaths of Ms. Isayeva's son and three nieces. The government opened a criminal investigation into the matter in September 2000, but closed it in 2002 after finding that the military's conduct

was legitimate in the circumstances as a response to a large group of illegal fighters who had occupied the village and refused to surrender. An appeal of this decision is also pending.

In lodging their complaints, applicants Khashiyev, Akayeva, Isayeva, and Yusupova invoked violations of Convention Article 2 (right to life), Article 3 (prohibition against torture and inhuman or degrading treatment), and Article 13 (right to an effective remedy). Ms. Bazayeva also invoked violations of these articles, as well as an Article 1 violation under Protocol No. 1, which guarantees that every person is "entitled to the peaceful enjoyment of his possessions." On December 19, 2002, the Court declared all counts admissible. The Court decided that Russia's preliminary objection on the ground that the applicants had failed to exhaust their domestic remedies, as required by Article 13, was closely linked to the merits of the complaints and should be considered with the merits at the next stage of the proceedings. The public hearing subsequently took place in Strasbourg, France, on October 14, 2004.

With respect to the Russian government's preliminary objection, the Court held that the applicants were not obliged to pursue the civil remedies provided for under Russian law, given that, at the date of the Court's admissibility decisions, the absence of results from the criminal investigations meant that Russia's Supreme Court and other domestic courts were incapable of considering the merits of any claim relating to the alleged criminal actions. This decision was unanimous for four of the applicants, but Judge Vladimiro Zagrebelsky of Italy dissented in *Khashiyev and Akayeva v. Russia*, noting that the inconclusive nature of the criminal investigations in that case did not necessarily prevent the applicants from vindicating their rights before a Russian civil court. Indeed, Mr. Khashiyev had succeeded in bringing a damage action before the Nazran District Court. Although Mr. Khashiyev was unable to pursue any independent investigation into the person(s) responsible for the assaults, the court did award damages based on the "common knowledge of the military superiority of Russian federal forces in the . . . district at the relevant time, and a general liability of the State for actions by the military." Judge Zagrebelsky conceded, and the majority held, that the lack of an effective criminal investigation might hinder Article 13's "effective remedy" provision in certain cases, but he did not consider applicants Khashiyev and Akayeva to be so encumbered.

With respect to the Article 2 allegations, the Court held unanimously in each case that the government violated the Convention on both substantive and procedural grounds. In *Khashiyev and Akayeva*, the Court noted that the government had submitted only about two-thirds of the criminal investigation file. On the basis of these submissions, the Court established that Russian military personnel had killed the applicants' relatives. The government did not offer any other plausible explanation for the cause of the deaths or any justification for the use of such lethal force. Accordingly, the Court concluded that there were Article 2 violations.

In *Isayeva, Yusupova and Bazayeva*, the Court found it undisputed that the applicants had been subjected to an aerial missile attack by Russian forces, but noted that its ability to assess the legitimacy of the attack and the manner of its execution was hampered by the government's failure to submit a copy of the complete investigation file. The government claimed that the attack had been to protect persons from unlawful violence within the meaning of Article 2, Section 2 of the Convention, which creates an exception for "the use of force, which is no more than absolutely necessary . . . in defense of any person from unlawful violence." Nevertheless, the Court concluded that the Russian military was aware that a "humanitarian corridor" stretching from Grozny to Ingushetia existed at the time of the attack, that the existence of the corridor "should have been known to authorities who were planning military operations anywhere near the Rostov-Baku highway," and that the presence of civilians therein should have alerted the military to "the need for extreme caution as regards the use of lethal force." Furthermore, the weapon used in the attack, a 12 S-24 non-guided air-to-ground missile, was so powerful that anyone who had been on the stretch of the road in question at the time of attack would have been in "mortal danger." Consequently, the Court found that, even assuming the Russian military had been pursuing a legitimate defensive aim at the time, it had not planned or executed its attack with "the requisite care for the lives of civilians." Consistent with this finding, the Court also held that Ms. Bazayeva's rights were violated under Article 1 of Protocol No. 1, noting that the attacks "constituted grave and unjustified interferences with the applicant's peaceful enjoyment of her possessions."

Similar facts were at issue in *Isayeva v. Russia*. The Court found it undisputed that the Russian government attacked the applicant and her relatives as they attempted to flee heavy fighting in the Chechen province of Katyr-Yurt through what they thought was a safe corridor. In its defense, the government again argued that its use of force was consistent with Article 2, Section 2 of the Convention. In this case, the Court accepted this argument, noting that the "undisputed presence of a very large group of armed fighters in Katyr-Yurt and their active resistance might have justified the use of lethal force by State agents." The Court also reasoned, however, that a balance still had to be struck "between the aim pursued and the means employed." The Court held, based on the documents submitted by the parties and the investigation file, which it again noted was incomplete, that the Russian military's use of indiscriminate weapons stood "in flagrant contrast" with the protection of lives from unlawful violence, which should have been the primary aim of its operation. The Court found that the military's actions, therefore, could not be "considered compatible with the standard of care prerequisite to an operation of this kind." Furthermore, in view of the military's use of high explosion aviation bombs and the fact that no state of emergency had been declared at the time, which, under Article 15, would have permitted the government's derogation from certain Convention obligations, the military's objective under Article 2, Section 2 could not be considered proportional to the level of force used. Although the Court accepted that the operation in Katyr-Yurt from February 4 to 7, 2000, did pursue a legitimate aim, it found a violation of Article 2 because the attack was not "planned and executed with the requisite care for the lives of the civilian population."

With respect to the investigations the government was obliged to undertake into the attacks, the Court noted in *Khashiyev and Akayeva v. Russia* that they were flawed by considerable delays and "a number of serious and unexplained failures to act once the investigation had commenced." As a result, the Court unanimously held that Russian authorities failed to carry out effective investigations into the assaults on the applicants and their relatives in each of the cases brought before the Court, violating Article 2 of the Convention.

With respect to the Article 3 allegations of torture in *Isayeva, Yusupova and Bazayeva*, the Court found that the applicants' complaints

were a consequence of the illegal use of lethal force in violation of Article 2. Separate issues, therefore, did not arise under Article 3. The Court did find in *Khashiyev and Akayeva* that the government's failure to conduct a thorough and effective investigation into what it conceded were "credible allegations of torture" violated Article 3's procedural requirement, although it did not find that the treatment of applicants' relatives met the requisite "reasonable doubt" standard. No complaints under Article 3 were submitted in *Isayeva v. Russia*.

In light of its Article 2, 3, and Protocol No. 1 findings, the Court further held that the applicants' complaints were all "arguable" under Article 13's "effective remedy" provision. Because the criminal investigations in each case suffered from serious shortcomings and lacked "sufficient objectivity and thoroughness," the Court noted that the effectiveness of any other remedy under Russian law, including civil remedies, had been incurably undermined. In *Khashiyev and Akayeva and Isayeva*, Judge Zagrebelsky dissented on the same grounds he expressed in the Court's majority opinion, holding the government's preliminary objections unfounded. Judge Anatoli Kovler of Russia joined in Zagrebelsky's dissent. The Court ordered the Russian government to pay approximately 136,000 EUR in pecuniary and non-pecuniary damages to the applicants.

INTER-AMERICAN SYSTEM

THE INTER-AMERICAN HUMAN RIGHTS system was created with the adoption of the American Declaration of the Rights and Duties of Man (Declaration) in 1948. In 1959, the Inter-American Commission on Human Rights (Commission) was established as an independent organ of the Organization of the American States (OAS) and it held its first session one year later. In 1969, the American Convention on Human Rights (Convention) was adopted. The Convention further defined the role of the Commission and created the Inter-American Court of Human Rights (Court). According to the Convention, once the Commission determines the case is admissible and meritorious, it will make recommendations and, in some cases, present the case to the Court for adjudication. The Court hears these cases, determines responsibility under relevant regional treaties and agreements, and assesses and awards damages and other forms of reparation to victims of human rights violations.

THE DEMOBILIZATION PROCESS IN COLOMBIA

For more than forty years, Colombia has been embroiled in a bloody civil conflict involving the government, paramilitary forces, and guerilla organizations. This era of violence in Colombia has resulted in an estimated 4,000 politically-motivated non-combatant deaths and 3,000 kidnappings each year. Since 1985, nearly three million people have been forcibly displaced from their homes. Right-wing paramilitaries are responsible for 60 to 80 percent of all human rights violations. In July 2004, the Colombian government officially initiated its first peace process with the country's paramilitary umbrella group, the United Self Defense Forces of Colombia (AUC).

In February 2004, while the terms of the peace talks were being discussed, the Permanent Council for the Member States of the Organization of American States expressed its "unequivocal support" for the Colombian government's attempts to secure lasting peace through demobilization efforts with the AUC. In accordance with its obligations to ensure that member states comply with international human rights and humanitarian law, the OAS invited the Inter-American Commission on Human Rights to advise the OAS mission in Colombia on that country's demobilization process and to report on the government's adherence to its international legal obligations. Of particular concern were various proposals to grant amnesties to the paramilitaries in exchange for demobilization.

THE COMMISSION'S REPORT

The Commission issued its report on the Colombian demobilization process in December 2004. The report examines the history of the Colombian conflict and the government's past attempts at achieving peace. Although the report commends the Colombian government for its past and present attempts to end the country's civil conflict, it reminds the government that it must comply with international human rights standards while disarming the paramilitaries and guerillas.

The Commission's report emphasizes that whenever crimes against humanity, war crimes, or human rights violations occur in the course of armed conflict, customary international law and treaty law require the state to investigate the facts and prosecute and punish those responsible. Because these crimes constitute serious violations of international law, they are

not subject to amnesty and the state is required to establish the individual criminal liability of the persons involved.

In its analysis of Colombia's demobilization process, the report relies on Inter-American Court of Human Rights (Court) case law. The Court has consistently ruled that "self-amnesties" for acts committed by paramilitaries, such as those promulgated by transitional governments in El Salvador, Argentina, Chile, Uruguay, and Peru, are illegal. The Court found that such amnesty programs violate international human rights law and are incompatible with the American Convention on Human Rights (Convention) because, among other things, they preclude punishment of human rights abuses. There has been no jurisprudence thus far, however, on whether amnesties for illegal armed actors are permissible.

In addition, the Court has indicated in previous cases that simply investigating facts and prosecuting persons responsible for human rights violations are not sufficient to ensure that the rights recognized by the Convention are satisfied. Rather, the Court has held that States Parties must also make reparations to the injured party or his next-of-kin. When this is not possible, the State Party should pay compensation or provide rehabilitation such as medical and psychological care and legal or other social services. Other appropriate remedies delineated by the Court are the cessation of continuing violations, the investigation and verification of acts constituting international crimes, public disclosure of the results of such investigations, search for the remains of the dead or disappeared, and public recognition of the human rights violations.

THE PROPOSED AMNESTY PROGRAM

One of the Commission's central concerns is that the government's proposed demobilization process will deprive the victims, the country, and the international community of potential trials that would air the truth and provide reparations for victims. The primary incentive for the paramilitaries to participate in the demobilization process is preclusion from or dismissal of investigations into violations of human rights or humanitarian law they may have committed. These benefits are only available, however, to those who confess, those who have been accused of or tried for political crimes, and those who have not yet been convicted. The benefits do not extend to those who have been involved in conduct constituting "atrocious acts of ferocity or barbarism, terrorism, kidnapping, genocide or homicide."

Such exceptions would keep the most egregious human rights violators from benefiting from the amnesty program.

The Colombian government has tried to negotiate with the AUC to establish a legal framework that would encourage demobilization of its members who would otherwise be ineligible for amnesty because of their involvement in gross human rights abuses. Colombian civil society organizations and the international community criticized this initiative because it would allow lighter sentences for persons who have committed serious violations of human rights or international humanitarian law, or both. As a result, this plan was withdrawn and subsequently revised.

The revised plan, introduced in April 2004, offered "alternative penalties" for human rights violators. The plan defines "alternative penalty" as a deprivation of liberty for a period not less than five years and not greater than ten years. Such penalties would be much less severe than those ordinarily imposed under criminal law.

Under this plan, a "Tribunal for Truth, Justice, and Reparation" (Tribunal) would issue an opinion determining whether judge-imposed criminal sentences should be enforced. Upon a favorable opinion from the Tribunal, the individual would be given an "alternative penalty," escaping a harsher criminal penalty. The Commission determined that this plan would render punishments that are not proportional to the nature, magnitude, or frequency of the crimes committed by the offenders, because they would not be nearly as severe as the penalties criminal courts would impose.

Those found guilty of committing atrocious crimes would not be eligible for the general amnesty. Nonetheless, the Commission voiced concern that illegal armed groups that have not been formally investigated, but are responsible for committing crimes against civilians, would enjoy impunity under this plan. The Commission fears that there would be no judicial proceedings for persons who have not been tried or convicted prior to their demobilization, resulting in impunity for human rights abusers.

The gaps and ambiguities of the various proposed bills and initiatives leave the scope of procedural benefits unclear, creating legal uncertainty for all parties involved. The Commission's report criticizes the high level of impunity and ineffectiveness of the administration of justice in Colombia. It demands that

of the victim.”

The Trial Chamber noted that the “victims’ lack of consent to the rapes” was adequately established by the facts that Gacumbitsi threatened to kill them in an atrocious manner if they resisted, and that the victims who did flee were attacked. It is unclear from this statement whether the Trial Chamber found the defendant’s threat or use of force necessary to establish the victim’s lack of consent. Earlier jurisprudence by the Trial Chamber in *Semanza* and *Kajelijeli* has established that non-consent should be “assessed within the context of the surrounding circumstances.” This standard was supported by the ICTY Appeals Chamber in *Kunarac*, which then clarified that although “[f]orce or threat of force provides clear evidence of non-consent, . . . force is not an element per se of rape.” It determined that

[t]here are ‘factors [other than force] which would render an act of sexual penetration non-consensual or non-voluntary on the part of the victim.’ A narrow focus on force or threat of force could permit perpetrators to evade liability for sexual activity to which the other party had not consented by taking advantage of coercive circumstances without relying on physical force.

Significantly, it noted that “the circumstances . . . that prevail in most cases charged as either war crimes or crimes against humanity will be almost universally coercive. That is to say, true consent will not be possible.”

Because the Trial Chamber determined that Gacumbitsi was personally responsible for genocide and the crimes against humanity of extermination and rape under Article 6(1) of the ICTR Statute, it deemed it unnecessary to decide whether he could also be held responsible as a superior under Article 6(3), because these forms of responsibility “cannot be charged cumulatively on the same basis of facts. In case of cumulative charging, the Trial Chamber will retain only the form of responsibility that best describes the Accused’s culpable conduct.” This view seems to be in accord with a movement by both Tribunals towards alternative charging under these articles. For example, the *Kayishema* Trial Chamber found that these two forms of responsibility are “not mutually exclusive,” but the more recent *Ntagerura et al.* Trial Judgment found that they are alternative modes of responsibility.

Similarly, in *Blaskic*, the ICTY Trial Chamber allowed the cumulative application of personal responsibility and command responsibility, but in more recent cases, such as *Krstic*, *Krnjelac*, and *Naletilic & Martinovic*, the Trial Chamber has determined that only the mode of responsibility that most appropriately expresses the accused’s culpability should be charged.

Nevertheless, in sentencing Gacumbitsi, the Trial Chamber considered that his “active participation in the said crimes explain[ed] why he could not take measures [as a superior] to prevent or punish the perpetrators” and was an aggravating factor. In doing so, it appears to have adopted the view of the *Ntagerura et al.* Trial Chamber that the alternative (uncharged) form of responsibility should be considered in sentencing “in order to reflect the totality of the accused’s culpable conduct.” HRB

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future investigations be handled in a way that complies with the state’s international obligations, especially because so many victims are reluctant to come forward and report these human rights abuses for fear of retaliation.

The Commission’s report also focuses on the Colombian government’s role in permitting the proliferation and impunity of paramilitary groups. The Commission is concerned that, despite their commitment to a ceasefire agreement as a condition of the demobilization process, AUC members continue to be implicated in serious human rights violations, including massacres of defenseless civilians; the selective assassinations of social leaders, trade unionists, human rights defenders, judicial officers and journalists; and acts of torture, harassment, and intimidation.

Although the Colombian government claims it does not have an official policy of encouraging paramilitary activity, the Commission report reminds the government that, under jurisprudence of the inter-American system, the lack of an official policy is insufficient to relieve any government of liability for allowing paramilitary groups to flourish. The Court and the Commission have previously held governments responsible for violating the Convention when state agents acquiesce to paramilitary activities. The Commission report calls on the Colombian government to recognize its own responsibility in facilitating the formation of some of the paramilitary groups that have participated in civilian massacres and other human rights violations and criticizes it for failing to take the measures necessary to prohibit, prevent, and punish their criminal activities.

The Commission concludes that in order to comply with international legal standards, Colombia must uncover the truth of what has happened in its civil conflict, including the degree of government involvement in paramilitary activity. The Commission further recommends that the Colombian government adopt a comprehensive legal framework that establishes clear conditions for the demobilization of illegal armed groups to ensure that human rights abusers are held accountable. HRB

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