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Legislative Focus: The Human Rights Information Act

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LEGISLATIVE FOCUS

The Human Rights Information Act

by Heather Fox*

On October 8, 1997, Representative Tom Lantos (D-CA), a long-time human rights advocate and the only World War II Holocaust survivor currently in Congress, proposed the Human Rights Information Act (HRIA). If passed, the bill will declassify U.S. government information about human rights violations that have occurred around the world, providing a new tool for human rights advocates.

The HRIA's primary function is to expedite the declassification of all U.S. government documents concerning global human rights violations, designated "human rights records" in the bill. The HRIA initially dealt only with U.S. records on Guatemala and Honduras, but Representative Dennis Kucinich (D-OH) introduced an amendment to the HRIA that expanded the bill's scope to include all regions of the world.

Substance of the HRIA

HRIA Section 3, which contains definitions of terms used in the bill, broadly defines a "human rights record" as "a record in the possession, custody, or control of the United States Government containing information about gross human rights violations committed after 1944." In addition, Section 3 defines "agency" as "any agency of the United States Government charged with the conduct of foreign policy or foreign intelligence," including the Department of Defense (DOD), the Central Intelligence Agency (CIA), and the Executive Office of the President.

Section 4 contains provisions regarding identification, review, and public disclosure of human rights records. First, it requires that all U.S. agencies identify and review all human rights records under the agencies' control, with the intent of declassifying as much information as possible, no later than 120 days after the enactment of the bill. Second, no later than 150 days after enactment, the president shall report to Congress on the compliance of each agency.

Section 5 of the bill provides protection for information that, if disclosed under the provisions of Section 4, would jeopardize military or intelligence operations and therefore threaten national security. It specifically allows for postponement of public disclosure if there is "clear and convincing evidence" that it would expose an intelligence agent, source, or method that currently is being used or is expected to be used.

Section 7 of the bill establishes an Appeals Panel to review the determinations of the agencies required to declassify human rights records under the HRIA. The panel will consist largely of the directors of these agencies. Importantly, however, it will also include two positions, to be appointed by the president, that will be filled by non-governmental employees with substantial experience in human rights, preferably recommended by nongovernmental human rights organizations. The task of the Appeals Panel (Panel) is to review agency determinations to postpone disclosure of any human rights record. Unless the Panel finds clear and convincing evidence that the record is either not related to human rights or represents a threat to national security if publicly disclosed, its duty is to disclose the records. The president will have the power to overturn any decision made by the Panel to declassify. If the president overturns a Panel decision, however, he must provide Congress with a written explanation of his decision, which will be made publicly available.

Implications of the HRIA

Proponents of the bill believe that the release of government information concerning human rights violations will enable victims and their families to learn the truth about U.S. government knowledge of such violations. In addition, by disclosing information to the public, more evidence could be amassed and the resulting public outcry could lead to more prosecutions of human rights violators. The prosecution of these violators would in turn strengthen the rule of law and deter future violations.

Opponents of the bill find three main faults with the HRIA. First, they argue that current declassification procedures, such as those the Freedom of Information Act (FOIA) provides, are sufficient. According to Amnesty International, however, the DOD and U.S. intelligence agencies are not accommodating FOIA petitions for declassification. Furthermore, FOIA pertains only to documents 25 years or older, which precludes the declassification of many documents relating to more recent human rights violations. In contrast, the HRIA would compel agencies to disclose current human rights records.

Second, critics charge that the widespread declassification required by the HRIA may be an impossible undertaking due to massive amounts of paperwork and limited funding. Yet, proponents of the bill point to initiatives taken by Senator Daniel Moynihan (D-NY), who formed the Senate Commission on Protecting and Reducing Government Secrecy. Senator Moynihan organized the committee due to his belief that excessive funding, including a portion of the U.S. intelligence community's yearly budget of more than \$26 billion, is spent on overclassification in all areas. Thus, if overclassification is reduced in general, this will make more funding available for declassification under the HRIA and prevent unnecessary classification of any future human rights records.

A final concern with the HRIA is whether it would pass constitutional muster. HRIA opponents accuse Congress of overstepping its boundaries under the separation of powers doctrine by establishing the Appeals Panel to oversee executive agencies. Congress, however, has established similar congressional panels to oversee executive activity in other areas. For example, Congress established a review board to oversee the declassification of documents pertaining to former president John F. Kennedy's assassination. Furthermore, the power of the executive branch remains intact because the president appoints the two nongovernment employee positions and he alone can veto the decisions of the Panel.

Conclusion

Due to its controversial nature, the HRIA met opposition in the 105th Congress. In the House of Representatives, the Committee on Government Reform and Oversight referred it to the Subcommittee on Government Management, Information, and Technology, which approved and forwarded the bill back to the full committee on September 28, 1998. The full committee, however, has yet to move on the bill. After lobbying by the heads of the CIA and the Federal Bureau of Investigation, the Senate tabled the HRIA as a proposed

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NEWS FROM THE INTER-AMERICAN SYSTEM

Caso Lori Berenson—Admissibility (Peru)

Facts: On January 22, 1998, Lori Berenson's representatives presented her case to the Inter-American Commission on Human Rights (Commission), alleging that Peruvian police detained Berenson on November 30, 1995. They also alleged that, during her subsequent interrogation, Berenson was neither notified of the charges against her nor allowed to give testimony in her defense. While in detention, she was subjected to cruel, inhumane, and degrading punishment. Sentenced to life imprisonment by an anonymous military tribunal, Berenson appealed her conviction without success. The petitioners claimed that Peru violated Berenson's rights under the American Convention on Human Rights (Convention), including the rights to the assistance of defense counsel (Article 8.2.d), adequate time and resources to prepare her defense (Article 8.2.c), humane treatment (Article 5), and judicial protection (Article 25).

Decision: The Commission determined that the petitioners had exhausted all effective internal judicial remedies, had presented the case to the Commission in a timely manner, and had not initiated proceedings before any other international body. Based on this conclusion, the Commission declared the case admissible and announced its intention to solicit the parties' opinions about the possibility of initiating friendly settlement proceedings.

Caso Castillo Páez—Reparations (Peru)

Facts: The Commission submitted this case to the Inter-American Court of Human Rights (Court) on January 13, 1995. The Commission alleged that, on October 21, 1990, Peruvian security forces in Lima forced Ernesto Rafael Castillo Páez, a 22 year old university student, into the trunk of a police vehicle. After his abduction, he was never seen again. A Peruvian court determined that members of the Peruvian National Police detained Castillo Páez, but found that there was insufficient evidence upon which to convict them.

The Court released its decision on the case's merits on November 3, 1997. It determined that Peru violated Castillo Páez's rights under the Convention, including the rights to personal liberty (Article 7), humane treatment (Article 5), life (Article 4), and effective recourse in a competent national court or tribunal (Article 25). The Court also ordered Peru to pay reparations to the victim's family and to reimburse them for expenses incurred in the Peruvian domestic proceedings.

Decision: On November 27, 1998, the Court released its decision regarding reparations. The Court ordered Peru to pay Castillo Páez's family the equivalent of U.S.\$245,021.80 for the loss of the victim's future earnings, his family's pain and suffering, and expenses they incurred investigating his

"disappearance." The Court also ordered Peru to pay the equivalent of U.S.\$2,000 to compensate the victim's family for costs associated with the domestic judicial proceeding. Finally, the Court directed Peru to investigate, identify, and prosecute the persons responsible for Castillo Páez's "disappearance."

Caso Loayza Tamayo—Reparations (Peru)

Facts: The Commission submitted this case to the Court on September 26, 1994. Peruvian authorities detained María Elena Loayza Tamayo on suspicion of being a member of the Shining Path rebel group and imprisoned her from 1993 to 1997. The Commission alleged that, during her detention, she was held *incommunicado*, isolated in a small cell without fresh air or natural light, and subjected to cruel and degrading treatment such as beatings and threats of being drowned.

On September 17, 1997, in its decision on the merits of the case, the Court ruled that Loayza Tamayo suffered cruel, inhumane, and degrading treatment during her detention in Peru. The Court held that Peru violated Loayza Tamayo's rights under the Convention, including the rights to personal liberty (Article 7), humane treatment (Article 5), and judicial guarantees (Articles 8.1, 8.2, and 8.4), and it ordered her release. The Court also found that Peru was obligated to make reparations to the victim and her family. In accordance with the Court's decision, Peru released Loayza Tamayo on October 16, 1997.

Decision: On November 27, 1998, the Court released its decision regarding reparations. The Court ordered a number of restitution measures, including the reinstatement of Loayza Tamayo's university teaching position and pension benefits. The Court also awarded the equivalent of U.S.\$167,190.30 to the victim and her family for damages including the victim's lost income, her family's expenses in travelling to visit her in prison, the loss of income by the victim's sister, an attorney, who represented the victim, and the victim and her family's pain and suffering. The Court further ruled that Peru must pay Loayza Tamayo's attorney, her sister, U.S.\$20,000 to cover legal fees and costs. It directed Peru to bring certain national laws concerning terrorism and treason into conformity with the Convention. Peru is also obligated under the Court's ruling to investigate, identify, and punish those persons responsible for violating the victim's rights. Finally, the Court declined to order monetary reparations for "life project" damages, which the victim defined as losses to her personal and professional development. Although the Court recognized that the victim suffered "life project" damages, it declined to formulate a standard to quantify such damages. ☹

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amendment into the Foreign Operations Appropriations Act of 1999, by a 50-43 vote. Representative Lantos plans to reintroduce the HRIA in the 106th Congress and is optimistic about its passage.

The HRIA's drafters hope that the bill's declassification procedures will further reveal the truth about U.S. government knowledge of human rights violations. Around the

world, processes intended to expose the truth about government participation in such activities, such as the South African Truth and Reconciliation Commission, have shown that they are imperative to ensure the accuracy of historical records and to aid the healing of victims of human rights violations, their families, and society as a whole. ☹

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