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United Nations Update

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not granted by the Convention, the Statute, or the Court Rules. Finally, the Court noted that the sentence in the case established state responsibility, not individual responsibility.

Second, the state asked if it should give the sum of \$7,500 to the victim's widow Pelagia Mérida Contreras Montoya de Cantoral or to the Mining Federation of which the victim was Secretary General. This sum was found in the hostel where Cantoral Huamaní was staying at the time of his death, taken by the state, and subsequently lost. Because the Court found that the question arose out of a doubt concerning the meaning of the sentence, it proceeded to rule on the question. The Court held that because the victim's widow was part of the suit, unlike the Mining Federation, she should receive the money.

Third, the state asked the Court to reexamine whether Cantoral Huamaní's mother Elisa Huamaní Infanzón indeed died on August 17, 1989, six months after her son was killed. The Court had found this to be true. The state claimed in its request for an interpretation of the sentence that she was still alive. The Court held that this request was not for clarification, but that it rather posed a factual question that had already

been considered at the procedural stage and to which the state had not objected. Thus, the Court declared this question inadmissible.

CASE UPDATE: COMPLIANCE WITH JUDGMENT IN *ESCUÉ ZAPATA VS. COLOMBIA*

On May 1, 2008 the Court examined the Colombian government's request for an interpretation of the decision in the case of *Escué Zapata vs. Colombia*. The Court handed down the decision in this case on July 4, 2007 (see 15 No. 1 HUM. RTS. BRIEF, 51). It held that Colombia had violated Articles 4 (protecting the right to life); 5.1 and 5.2 (providing a right to humane treatment); 7.1 and 7.2 (protecting personal liberty); 8.1 (protecting fair trial rights); 11.2 (protecting privacy rights); and 25 (providing a right to judicial protection) of the Convention. German Escué Zapata, a member of one of Colombia's 87 indigenous communities and a former mayor of the city of Jambaló, was taken from his home by the Colombian military, bound, beaten, and arbitrarily executed by gunfire. By asking questions on the decision, the state extends the period of time in which to comply with the Court's sentence.

Colombia has asked the Court four questions. First, it asked whether a fund established for the collective use of the Jambaló community need be a particular type, such as a fiduciary account or an inter-administrative agreement. Second, it inquired whether the state is responsible for costs associated with the victim's daughter's studies if she does not finish within the normal five years, what its responsibility is if she is not admitted, and whether the state can cover lodging, transportation, and material costs with a one-time payment. Third, it asked how the Court's holding should be published — for example, which parts need to be included? Fourth, it asked if litigation costs should be paid to the victim's representatives or the victim's mother. **HRB**

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UNITED NATIONS UPDATE

NEWLY FORMED UN GROUP WORKING TO ENSURE RIGHTS OF PERSONS WITH DISABILITIES

More than 20 UN departments, agencies, programs, and funds have combined to create the Inter-Agency Support Group for the Convention on the Rights of Persons with Disabilities (Convention) to support measures to ensure the rights of the world's 650,000,000 persons with disabilities. The Convention, adopted by the General Assembly at the end of 2006, is only three ratifications short of the 20 needed to become a binding international legal document. When it opened for signature, 40 countries initially indicated their desire to sign onto the Convention.

The Convention aims to ensure that persons with disabilities are guaranteed

equal human rights to non-disabled persons. It covers such rights as equality, non-discrimination, independent living, and cultural and political participation. The purpose of the Support Group is to raise awareness of the Convention in hopes of securing the remaining ratifications needed and to create an infrastructure capable of implementing its goals. To this end, the Support Group will focus on implementing policies, international cooperative programs, and capacity-building for Member States, civil society, and the UN, and the creating a Committee on the Rights of Persons with Disabilities.

The international community of people with disabilities, as well as disability advocates and experts, have embraced the Convention as a way to further the interests of disabled people worldwide. In some

countries, disabled people may be denied the right to open a bank account or to refuse medical treatment. Article 12 of the Convention guarantees disabled people the right to own property, manage their financial affairs, and to enjoy legal capacity on an equal basis with others. Some advocates stress that much work remains at a domestic level before many countries, even relatively progressive and developed ones, can fully implement the Convention. The European Union has been criticized as having high levels of unemployment for adults with disabilities and segregated school systems for disabled children. Critics warn that so long as disabled people remain disenfranchised, they will be difficult to represent politically as their voice will only be heard by proxy. While some believe that the Convention will help overcome such problems, others suggest that

change must be institutionalized at the Member State-level before the Convention will be able to take hold.

Critics of the Convention assert that other existing conventions, including the two International Covenants on human rights, the Convention on the Elimination of Discrimination against Women, and the Convention on the Rights of the Child, already provide adequate protections for the disabled, and that the difficulty of implementing a new convention may relegate it to mere speech with very little enforcement capacity. Their opinion is that UN bodies should focus on ensuring compliance in monitoring the existing conventions instead of negotiating new definitions and terms. They point to problems surrounding the Migrant Workers Convention, which experienced difficulty obtaining state support because it imposed more obligations than many states were willing to accept. Furthermore, some stress the link between accommodation of the disabled and development, pointing out guaranteeing the right to vote means little if an individual does not have access to a wheelchair with which to reach the polls. Supporters of the Convention have responded by emphasizing that people with disabilities can be a resource for further development, so long as they are guaranteed access to work and political representation.

The creation of the Support Group suggests that the Convention will soon enter into force. Much work remains for advocates and the disabled to see that the aspirations in the Convention are realized.

HUMAN RIGHTS COUNCIL PROGRESS NOTED AS IT ENDS SEVENTH SESSION

The Human Rights Council's (Council) seventh session marks the inauguration of the first Universal Periodic Review, a mechanism that will examine 48 UN Member States per year to assess the extent to which they have or have not fulfilled their human rights obligations. The first report of the Universal Periodic Review working group will be examined by the Council in its eighth session, scheduled for June 2008, with each examined country being given approximately three hours for debate in the 47-member Council. The Review is expected to cover all 192 Member States by 2011 and is intended to prevent states

from using the Council to shield poor human rights records.

The Council replaced the Human Rights Commission in 2006 as part of a system of UN reform. Council President Doru Costea is optimistic about the changes, but acknowledges that their successes cannot be measured until they begin to be implemented. The Universal Periodic Review, for example, hopes to formalize a process by which Member States will regularly and objectively be reviewed.

In response to criticism claiming that its internal intelligence efforts were biased, the Council will rely on sources coming from outside the UN and the country being examined in order to legitimize the process. In the past, this reliance upon independent experts has not been consistent, and critics have decried certain country-specific procedures that placed too much attention on Israel and too little on Cuba and North Korea. The Council has also elected an 18-member Advisory Committee, set to hold its first session in August. The Advisory Committee is intended to further assist the Council in becoming a more transparent and fair body. This achievement rests largely on Council members' willingness and desire to confront States regardless of political and other non-human rights-related considerations, a potential complicating circumstance that may not have been reached by these reforms.

EXCESSIVE FORCE, POLITICAL VIOLENCE USED IN NEPAL SAYS UN REPORTS

The Office of the High Commissioner for Human Rights in Nepal (OHCHR-Nepal) released a report concerning the February protests in Terai stating that police sometimes used excessive force when dealing with the demonstrations and protests. OHCHR-Nepal concluded that during the February crackdown, six people died as a result of unjustified lethal force, five of them due to police fire. While the report acknowledges the difficult position of the police, it notes that by not restricting their use of force to the minimum extent necessary to disperse the illegal but non-violent assemblies, the police fell short of international human rights standards.

The Security Council has recognized that Nepal's leaders have "successfully

managed many difficulties in the peace process" as the country prepared for its Constituent Assembly elections in April. These elections were already delayed for one year due to political disputes. OHCHR-Nepal was joined by the UN Mission in Nepal (UNMIN) in decrying the upsurge of violence in the Terai region, warning that it threatened to undermine the polls. OHCHR-Nepal corroborated reports that the Communist Party of Nepal-Maoists (CPN-M) engaged in pre-planned attacks on rival political parties, which called into question the likelihood of free and fair elections. Locals were threatened as a method of influencing the vote.

The election occurred on April 10, and the CPN-M won a simple majority. The election is particularly significant because the newly elected Assembly will draft a new constitution for the nation, which two years ago emerged from a decade-long civil war that killed an estimated 13,000 people.

Prior to the election, OHCHR and UNMIN warned that political parties' failure to follow the election code of conduct and respect the human rights of the Nepalese people could undermine the legitimacy of the election. Political violence continued in the days before the election, with a bombing at a mosque and continuing acts of violence against candidates, party supporters, and voters. UNMIN urged both the Maoist guerilla and Nepal armies to adhere to the peace agreement to prevent interference with the electoral process. The combined reports of the OHCHR and UNMIN also urged all political parties to refrain from violence while recommending that the government improve institutional accountability to ensure that the police operate within international human rights standards.

Despite concerns, international observers hailed the April election as free and fair. The Special Representative of the UN Secretary-General praised the process and continued to urge all parties to act peacefully and accept election results. As the *Human Rights Brief* went to press, political parties in the new Constituent Assembly were still working to form a coalition government. **HRB**

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