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NEWS FROM THE INTER-AMERICAN SYSTEM

by Ismene Zarifis*

Inter-American Commission on Human Rights

On-Site Visit to the Republic of Colombia

On December 7, 2001, the Inter-American Commission on Human Rights (Commission) visited Colombia to observe the human rights situation. The Commission expressed grave concern over increased acts of intimidation and violence attributable to armed dissident groups involved in Colombia's internal armed conflict. A three-year peace process is advancing slowly and has not prevented massacres, summary executions, hostage taking, kidnapping, and other violations of international humanitarian law. The Commission expressed particular concern over the build up of paramilitary groups, their involvement in criminal activities, and the state agents' apparent support of these groups, stating that the lack of investigation into violent crimes and violations of international humanitarian law perpetuate violence and impunity. Furthermore, the Commission expressed worries over threats and attacks made against human rights defenders and journalists, which severely jeopardize freedom of expression. (For more information, see Press Release No.33/01).

Concerns about Violence in Haiti

In two recent press releases, the Commission expressed concern over the political violence in Haiti and its direct impact on the safety of human rights defenders.

In Press Release No. 34/01, the Commission condemned violence resulting from an armed attack on the National Palace on December 17, 2001, in which five people died and several others were injured. Dr. Santiago Cantón, the executive secretary of the Commission, stressed the need "to restore a climate of democracy in Haiti and the importance of the rule of law." In Press Release No. 28/01, Dr. Cantón expressed serious concern over recent death threats targeting human rights defenders and requested that the government take precautionary measures to protect these individuals. In both instances, the Commission urged the State of Haiti to investigate these acts of violence and intimidation and bring to justice those responsible.

Case 11.381: Milton García Fajardo and Others (Nicaragua)

Facts: Petitioners, the Nicaraguan Center for Human Rights and the Center for Justice and International Law, presented their petition to the Commission on June 7, 1994, alleging judicial error and arbitrariness in a Nicaraguan court decision that caused 142 customs employees to lose their jobs. Customs employees organized a strike in front of the Ministry of Labor on May 26, 1993, after their written request for improved working conditions and increased wages was denied by the Ministry. The petitioners also alleged police abuse of the workers during the strike. The Ministry of Labor declared the strike illegal according to Article 227 of the Worker's Code. The employees peti-

tioned the Court of Appeals to challenge the illegality of the strike and to obtain a judgment from the Supreme Court on the constitutionality of their actions. The Court of Appeals ordered 142 employees suspended. One year later, the Supreme Court affirmed the Ministry of Labor's administrative decision that the strike was illegal. The result of the decision impacted over 600 dependent family members, more than half of whom were children.

Decision: The Commission found violations of Article 5 (Right to Humane Treatment), Article 8 (Right to a Fair Trial), Article 25 (Right to Judicial Protection), Article 26 (Progressive Development), and Article 1.1 (Obligation to Respect Rights) of the American Convention on Human Rights (Convention). The Commission recommended a complete and impartial investigation to determine criminal responsibility for the injuries caused to the victims. The Commission further recommended that the Nicaraguan government award adequate reparations to the 142 customs employees. The decision on the merits was published on October 11, 2001, after the state failed to follow the Commission's recommendations within the allotted period.

Case 12.350: MZ (Bolivia)

Facts: Petitioners, the Latin American and Caribbean Committee for the Defense of Women's Rights and the Center for Justice and International Law, alleged that a Bolivian court's decision to acquit a convicted rapist was arbitrary. The case involved the acquittal of Jorge Carlos Aguilar, who was found to have raped MZ in her home on the night of October 2, 1994. The petitioners alleged that the unfounded court ruling was contrary to the weight of the evidence, demonstrating the defendant's guilt. Initially, the third criminal judge of Cochabamba found Mr. Aguilar guilty of rape and unlawful entry, sentencing him to five years in prison. On appeal, Mr. Aguilar presented a written statement to the court, alleging instead that MZ had sexually assaulted him. Based on this statement, the court pardoned Mr. Aguilar. On appeal, the Supreme Court of Justice rejected a petition alleging error of fact and law by the lower court and declared the request unfounded.

Decision on admissibility: The Commission admitted the petition, as it fulfilled the Commission's procedural admissibility requirements, and the facts alleged characterized violations of the Convention. The Commission found violations of Article 1.1 (Obligation to Respect Rights), Article 8 (Right to a Fair Trial), and Article 25 (Right to Judicial Protection) of the Convention. Additionally, the Commission found that Bolivia violated Article 7 (general condemnation against all forms of violence against women) of the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence Against Women. The Commission found that the State of Bolivia violated MZ's right to a reasoned judicial decision and that this decision was arbitrary and unfounded. The Commission will proceed to hear the case on the merits.

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Inter-American Court

Provisional Measures Ordered for Center for Human Rights Miguel Agustin Pro Juarez and Others (Mexico)

Facts: The Commission asked the Inter-American Court of Human Rights (Court) to order provisional measures to protect human rights defenders working at the Center for Human Rights Miguel Agustin Pro Juarez (Center) and family members of the late Digna Ochoa. Digna Ochoa was a prominent human rights activist who was the object of numerous attacks and a kidnapping before her assassination on October 19, 2001. Threats and intimidation against her co-workers and family members persist.

Decision: On November 30, 2001, the Court expressed grave concern for the safety of Digna Ochoa's co-workers and family members. The Court ordered the state of Mexico to provide protection for specific individuals working at the Center and the family members of Digna Ochoa. Further, the Court asked the Mexican government to investigate these acts of violence and intimidation and to prosecute those responsible. The state is required to report every two months on the security measures implemented pursuant to this order.

Barrios Altos Case: Consultative Opinion on the Domestic Legal Effects of Amnesty Laws (Peru)

Facts: The Barrios Altos case involved the summary execution of fifteen individuals by Peruvian military forces who raided a building where the military suspected armed resistance group activity. The decision on the merits delivered on March 14, 2001, found violations of Article 4 (Right to Life), Article 5 (Right to Humane Treatment), Article 8 (Right to a Fair Trial), Article 25 (Right to Judicial Protection), and Article 1.1 (Obligation to Respect Rights) of the Convention. The Commission then asked the Court to clarify the Court's merits decision in which the Court declared the Peruvian amnesty laws incompatible with the Convention. The petitioners and the State of Peru disagreed as to whether this order applied only to the Barrios Altos case or generally to all human rights cases.

Decision: The Court clarified its finding on amnesty laws by holding that its decision should be applicable generally to all cases alleging human rights violations by members of the Peruvian security and police forces. The Court based its decision on Article 2 (Domestic Legal Effects) of the Convention, explaining that this provision calls for the adoption of measures to ensure that the rights in the Convention enjoy domestic legal effect in the member states. Amnesty laws shielding human rights violators from accountability violates member states' obligation to respect and ensure the rights in the Convention. Furthermore, the Court emphasized the importance of Peru's international obligation to investigate human rights violations, to prosecute those responsible for such crimes, and to publish the results of such investigations.

Awes Tingni Case (Nicaragua)

Facts: The Awes Tingni, an indigenous community of Nicaragua, have occupied an area of densely forested land on the Atlantic coast for generations. In 1995, the Nicaraguan government began to negotiate a 30-year timber-cutting license with a Korean company, resulting

in the unauthorized use and destruction of the Awes Tingni's land and natural resources. The Awes Tingni petitioned to the Nicaraguan Supreme Court, alleging violations of their property rights. The Supreme Court rejected this petition, but admitted a second petition, in which the Awes Tingni alleged that the government contract was invalid because it lacked the requisite number of signatures. The Supreme Court found the contract lacking legal effect without the required authorization of the Awes Tingni community. Nevertheless, the Supreme Court did not recognize that the government had violated the property rights of the Awes Tingni, nor did the Supreme Court compensate the Awes Tingni for the destruction to their land. The Awes Tingni requested compensation for the destruction of natural resources on their land. Additionally, the Awes Tingni charged the State of Nicaragua with the failure to guarantee their property rights and the failure to define clearly their communal lands.

Decision on the merits: The Awes Tingni decision on August 30, 2001, was the Court's first decision on a case involving indigenous peoples' property rights. Despite the fact that the Convention does not protect collective property rights *per se*, the Court found violations of Article 21 (Right to Property), Article 1 (Obligation to Respect Rights), Article 2 (Domestic Legal Effects), and Article 25 (Right to Judicial Protection) of the Convention. In its seven-to-one decision, the Court found violations of Articles 25 and 21 of the Convention. Additionally, the Court decided seven-to-one that: (1) Nicaragua should provide material damages in the amount of U.S.\$50,000 to the Awes Tingni within 12 months; and (2) Nicaragua should compensate members of the Awes Tingni in the amount of U.S.\$30,000 for the cost of litigating the case internally and in the Inter-American system. The Court decided unanimously that: (1) Nicaragua violated its internal law and should adopt legislative, administrative, and other measures to ensure the property rights of indigenous communities so that they may freely use and enjoy their land; (2) Nicaragua should clearly demarcate, define, and award appropriate title of the land in question to the Awes Tingni; (3) Nicaragua should refrain from interfering with the property rights of the Awes Tingni, should not act contrary to these land definitions, and should prohibit third parties from doing the same; (4) Nicaragua must issue a report every six months on the measures taken to execute this judgment; and (5) the Court will supervise the state's adherence to the judgment. Additionally, the Court held that the judgment itself provides a remedy to the Awes Tingni. (For more information, see "Awes Tingni v. Nicaragua" in the Human Rights Brief, Volume 8, Issue 3.)

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