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News From the Inter-American System

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NEWS FROM THE INTER-AMERICAN SYSTEM

by Terri J. Harris *

Inter-American Commission Cases

Case Gary T. Graham, now known as Shaka Sankofa (United States)

Facts: In October 1981, Shaka Sankofa was convicted of capital murder and sentenced to death in the State of Texas. Sankofa was 17 years old at the time of the offense. The International Human Rights Law Clinic at the Washington College of Law filed a petition on behalf of Sankofa with the Inter-American Commission on Human Rights (Commission) on April 26, 1993. The petition asserted a violation of the right to life, liberty and personal security (Article 1), the right to equality before the law (Article 2), the right to a fair trial (Article 18), and the right to due process of law (Article 26) under the American Declaration of the Rights and Duties of Man. As a precaution, the Commission requested Texas to ensure a stay of execution and grant Sankofa a full and fair hearing before the Texas Board of Pardons and Paroles.

Decision: On June 15, 2000, the Commission declared the petition admissible. The findings on admissibility stated that Sankofa had exhausted all available domestic remedies or else had been prohibited from petitioning by domestic legislation. The Commission further held that the 19-year delay in the execution and his age at the time of the offense eliminated any reasonable prospect of success in a domestic court.

Case Caloto Massacre (Colombia)

Facts: On December 16, 1992, a petition was filed on behalf of members of the Paez indigenous community of the northern Cauca region of Colombia against the Colombian State for the Caloto Massacre. The massacre resulted from a dispute over the El Nilo *hacienda* between the Paez community and the *Sociedad Agropecuaria Piedra Blanca* company, which purchased the land knowing it was inhabited by the Paez. The petitioners claimed Colombia violated the right to life (Article 4), the right to humane treatment (Article 5), the right to personal liberty (Article 7), the right to a fair trial (Article 8), and the right to judicial protection (Article 25) read in conjunction with Article 1(1) of the American Convention on Human Rights (Convention). Prior to the massacre, members of the indigenous community were harassed by company representatives and armed men for refusing to abandon the land in exchange for payment for their houses and improvements made to the land. The State conceded that on the night of December 16, 1991, members of the National Police, along with heavily armed civilians, went to the El Nilo *hacienda*, executed the leaders of the community, and shot others trying to flee. Before leaving, the armed men also burned the houses and property of the Paez.

Decision: While the parties originally agreed to a friendly settlement procedure according to Article 48(f) of the Convention, by October 1998 the petitioners asked the Commission to issue a ruling on the merits. The petition was considered admissible in light of the explicit acknowledgement by the State of its responsibility for the massacre. The Commission interpreted the rights in the Convention in the context of the specific rights of indigenous communities found in the International Labor Organization's 1989 Convention 169 on Indigenous and Tribal Peoples, the Inter-American Charter of Social Guarantees (1948), and the Commission's 1996 resolution on Special Protection for Indigenous Peoples. The Commission ruled the State violated the right to life (Article 4), the right to physical integrity (Article 5(1)), the right to personal liberty (Article 7), and the right to a fair trial and to judicial protection as provided for in Articles 8 and 25 of

the Convention, respectively. The State also failed to respect and ensure all rights in the Convention under Article 1(1) by not taking measures to prevent the massacre, even after members of the Paez community reported threats made against them. The

The 19-year delay in the execution and his age at the time of the offense eliminated any reasonable prospect of success in a domestic court.

Commission recommended Colombia investigate and punish those responsible for the massacre, make both monetary and social reparations benefiting the entire Paez community, and adopt measures to prevent future massacres.

Case Carmelo Soria Espinoza (Chile)

Facts: On February 15, 1997, the daughter of Carmelo Soria Espinoza filed a complaint with the Commission against the State of Chile alleging a violation of the right of access to justice. In July 1976, while working for a UN agency, Soria was kidnapped by agents of Chile's National Intelligence Agency (DINA), arbitrarily detained, tortured, and later executed. In 1995, the Chilean Supreme Court of Justice confirmed Soria was murdered and identified the state agents responsible. The Supreme Court, however, later terminated the criminal proceedings and declared the 1978 Amnesty Law (Decree Law Number 2.191) prevented the prosecution and punishment of those responsible. The petition requested the Commission declare the Amnesty Law incompatible with Chile's international obligations under the Convention.

Decision: On November 19, 1999, the Commission declared the Amnesty Law in Chile violated the State's obligations under Article 1(1) and 2 of the Convention. In applying the Amnesty Law to the disappearance and murder of Soria, the State violated the rights of judicial protection and access to justice under Articles 1(1), 2, 8, and 25 of the Convention. Pursuant to Article 29 of the Convention, the Commission also determined the State had violated Article 2(1) of the Prevention and Punishment of Crimes against Internationally Protected Persons. The Commission recommended the State prosecute and punish those responsible for the murder of Soria and repeal the self-Amnesty Law. The Commission placed special emphasis on the principles of individual criminal responsibility and universal jurisdiction for grave human rights violations. The Commission concluded that if Chile could not fulfill its international obligation to prosecute those responsible, the State would automatically be subject to universal jurisdiction.

Case Desmond McKenzie, et. al (Jamaica)

Facts: Six death row inmates at the St. Catherine District Prison in Jamaica individually petitioned the Commission between June 1998 and May 1999, claiming the mandatory imposition of the death sentence in each of their cases violated the state's obligation to respect rights (Article 1), the right to life (Article 4), the right to humane treatment (Article 5), the right to personal liberty (Article 7), the right to a fair trial (Article 8), the right to equal protection (Article 24), and the right to judicial protection (Article 25) under the Convention. The Commission later consolidated the cases into one report based on the similarity of facts and the issues presented. The petitioners asserted that the process of requesting a pardon or

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commutation from the Jamaican Privy Council violated their right to apply for amnesty, pardon, or commutation of their sentence under Article 4(6) of the American Convention. The Jamaican Privy Council may pardon or commute a death sentence under Articles 90 and 91 of the Constitution of Jamaica, but prisoners have no procedural guarantees.

Decision: On April 13, 2000, the Commission ruled Jamaica had violated Articles 4(1), 5(1), 5(2), 8(1), and 4(6) of the Con-

The Commission criticized the Peruvian Intelligence Service's (SIN) use of wiretapping, espionage, and physical surveillance to harass and intimidate opposition presidential candidates.

vention by disallowing the petitioners to present mitigating evidence at an individualized sentencing hearing before imposing the death penalty. The Commission found the Jamaican Privy Council's power to grant a pardon or commute a death sentence does not serve as a form of judicial review because under Jamaican law the petitioners have no effective right to apply for this form of discretionary relief. The Commission recommended the State commute the death sentences and offer the petitioners compensation. Additionally, the Commission recommended Jamaica adopt domestic legislation requiring the death penalty be imposed only in accordance with the American Convention and pass legislation allowing criminal defendants to apply for amnesty, pardon, or commutation of the death penalty.

The "Second Report on the Situation of Human Rights in Peru"

On June 2, 2000, the Commission issued the "Second Report on the Situation of Human Rights in Peru" (Report), following

an on-site visit in November 1998. The Report described measures implemented by the executive, legislative and judicial branches of government, restricting the right of political participation of its citizens, as guaranteed by Article 23 of the Convention. The Commission criticized the Peruvian Intelligence Service's (SIN) use of wiretapping, espionage and physical surveillance to harass and intimidate opposition presidential candidates. In documenting the State's interference in citizens' participation in the political process, the Commission referred to contentious cases from Peru currently under review, previously decided, or already submitted to the Inter-American Court of Human Rights. These included the *Case of Mariela Barreto Riofano*, the *Case of Susana Higuchi Miyagawa*, and the *Case of Baruch Iocher Bronstein*.

The Commission also reviewed reports by the Organization of American States Electoral Observation Mission, the Commission's Rapporteur for Freedom of Expression, the Peruvian Human Rights Ombudsman, and non-governmental organizations within Peru that observed the April 9, 2000, presidential and legislative elections. These reports documented serious abnormalities and persistent inequities in the voting process, including the tallying of the votes. Consequently, the Electoral Observation Mission and other election monitoring organizations decided against observing the second round of elections on May 28, 2000, which ultimately declared Fujimori the winner of the presidency. The Commission concluded the 2000 elections were not free and fair in light of international standards enshrining the right of political participation. The Commission further held that Peru should hold another election, guaranteed to be free and fair, within a reasonable time period, to uphold the rule of law and guarantee the right of political participation. As of November 27, 2000, Fujimori has resigned the presidency and been replaced by former congressman Valentin Paniagua. ☉

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procedural provisions of the Rome Statute that distinguish the ICC from U.S. common law procedures. First, the Rome Statute provides for the use of a fact-finding panel of judges rather than a jury (Articles 34, 39(2)(b)(ii), 74). As discussed above, historic U.S. treaty participation already subjects U.S. citizens to this procedure. Second, verdicts rendered by the ICC are by a vote of at least two judges (Article 74(3)). Finally, the ICC prosecutor may file an appeal based on errors of fact, law, and procedure (Article 81(1)(a)). Because U.S. citizens who commit crimes abroad are generally subject to the rules either of foreign courts or of the U.S. military courts-martial system, it is safe to assume that a U.S. citizen could encounter these same rules of procedure in a foreign country. In addition, U.S. courts-martial rules similarly stipulate that verdicts, in cases of acts resulting in unintentional civilian casualties or other unintentional harms, need not be rendered by a unanimous vote: "a finding of guilty results only if at least two-thirds of the members present vote for a finding of guilty" (R.C.M.921(c)(2)(B)).

Further, the United States has the capacity to ensure the constitutionality of the ICC's Rules of Procedure and Evidence (Rules) before committing itself to the provisions of the Rome Statute. At the signing of the Rome Statute, the Rome Conference adopted Resolution F, mandating the establishment of a Preparatory Commission (PrepCom) to complete draft texts

Ratifications of the ICC Statute as of November 2000.

COUNTRY	DATE OF RATIFICATION
Senegal	February 2, 1999
Trinidad and Tobago	April 6, 1999
San Marino	May 13, 1999
Italy	July 26, 1999
Fiji	November 29, 1999
Ghana	December 20, 1999
Norway	February 16, 2000
Belize	April 5, 2000
Tajikistan	May 5, 2000
Iceland	May 25, 2000
Venezuela	June 7, 2000
France	June 9, 2000
Belgium	June 28, 2000
Canada	July 7, 2000
Mali	August 16, 2000
Lesotho	September 6, 2000
New Zealand	September 7, 2000
Botswana	September 8, 2000
Luxembourg	September 8, 2000
Sierra Leone	September 15, 2000
Gabon	September 21, 2000
Spain	October 25, 2000

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