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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 COURT OF HUMAN RIGHTS

Resolutions Ordering Provisional Measures

Caso de la Comunidad de Paz de San José de Apartadó (Colombia)

Facts: Located in the Urabá region of Colombia, the Paz de San José de Apartadó Community (Community), consisting of approximately 1,200 individuals, has been attacked by both paramilitary groups and members of the Seventeenth Brigade of the National Army, who target members of the Community whom they believe are aiding or participating in the country's internal armed conflict. Since its organization in 1997, the Community has expressed its desire to remain neutral in the internal armed conflict. Community members, however, continue to be the targets of violent acts, including summary executions, disappearances, threats and intimidation, acts of torture, forced displacement, and the destruction of homes and livestock. The Inter-American Commission on Human Rights (Commission) originally requested the Colombian State to take precautionary measures to protect the members of the Community on December 17, 1997. On October 3, 2000, the Commission submitted a request for provisional measures to the Inter-American Court of Human Rights (Court) in accordance with Article 63.2 of the American Convention on Human Rights (Convention), which allows for provisional measures "in cases of extreme gravity and urgency, and when necessary to avoid irreparable damage to persons...." The provisional measures were requested to protect the lives and personal integrity of members of the Paz de San José de Apartadó Community. In the petition for provisional measures, the Commission informed the Court that it had received documentation of the assassination of 47 members of the Community within a period of nine months, despite the Commission's prior request for precautionary measures.

Decision: On October 9, 2000, the Court adopted a resolution calling on Colombia to adopt the necessary measures to protect the lives and personal integrity of named individuals in the Community whose lives were threatened. The Court held a public hearing on November 16, 2000, in order to receive the views of the Commission and the State of Colombia concerning the requested provisional measures. On November 24, 2000, the Court ordered final provisional measures, ratifying the October resolution on provisional measures. In addition, the Court ordered the State to investigate the acts against the Community members in order to identify and punish those responsible. The Court also called on the State to create the conditions necessary for the return of Community members who had been forcibly displaced to other regions of the country and to prevent further individuals from being forcibly displaced from their homes. Further, the Court required the State to allow the petitioners to participate in the planning and implementation of the provisional measures. In ordering the provisional measures, the Court considered the State's obligation under Article 1.1 of the Convention to "respect. . . and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms." The Court noted that all of the Community members were at an equal risk of suffering physical attacks on their personal integrity and their lives. As a result, the Court ordered

the State to adopt measures that would protect not only the named individual members of the Community, but also those members who did not want to be identified for fear of reprisals. The Court noted that ordering provisional measures to protect an entire community was an extraordinary step. The Court emphasized, however, that the Community was organized in a specific location, and had members who identified themselves as part of the Community. Provisional measures to protect the entire Community were necessary because all members were at an equal risk of physical attack and possible death.

Caso de Haitianos y Dominicanos de Origen Haitiano en la República Dominicana (Dominican Republic)

Facts: On November 12, 1999, the Inter-American Commission received information denouncing the mass expulsion of Haitians and Dominicans of Haitian origin from the Dominican Republic. The expulsions were allegedly carried out on a collective basis without any judicial proceedings to determine an individual's nationality, immigration status, or family connections to the Dominican Republic. The information received asserted that the Dominican immigration authorities selected individuals to be deported based on the color of their skin. The authorities also used excessive force in carrying out the expulsions, threatening the lives and physical integrity of the individuals being expelled. The information submitted to the Commission also documented cases of the sexual abuse of women who were being expelled from the country. On November 22, 1999, the Commission requested the Dominican Republic to adopt precautionary measures to protect those individuals facing collective expulsion or deportation. The State refused to implement the precautionary measures and, instead, asserted that the Haitians and Dominicans of Haitian origin were being repatriated in conformity with domestic legal proceedings under the authority of the Director General of Migration. Accordingly, the Dominican Republic did not change its practice or policy related to the expulsions. On May 30, 2000, the Commission submitted a request to the Court for provisional measures protecting Haitians and Dominicans of Haitian origin who are at risk of being collectively expelled from the Dominican Republic. The Commission submitted an Addendum to the request on June 13, 2000, listing the names of seven individual victims of the collective expulsions. After identifying these individuals, the Commission requested that the Court order provisional measures to include the immediate return of the named individuals and their protection within the Dominican Republic from detention and deportation motivated by race or national origin. In addition, the Commission petitioned the Court to adopt provisional measures that would require the Dominican Republic to suspend all mass expulsions and to establish the following minimum procedural guarantees for all individuals facing deportation: notification, access to family members, and a full hearing before competent authorities.

Decision: The Commission and the State presented their views at a public hearing before the Court on June 16, 2000. The Court also heard testimony from a Catholic priest serving as a missionary in the Dominican Republic, and from the Director of the Dominican-Haitian Women's Movement, who identified the border communities, or *bateyes*, that live in constant fear of being expelled. The Dominican Republic

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continued to assert that, as a sovereign state, it possesses the “non-negotiable and unrenounceable right” to deport foreigners illegally present in the country; as such, this right is beyond the scope of the Court. Although the Court recognized a state’s ability to determine its immigration policies, it ordered that such policies must conform to the state’s obligation to protect and guarantee the human rights found in the American Convention. The Court concluded that the Dominican Republic did not have a state policy of collectively expelling Haitians and Dominicans of Haitian origin. The Court did not discuss whether such a policy would be enforceable. The evidence and testimony before the Court did establish, however, that there were cases of individual human rights violations which occurred as a result of the expulsions. The Court concluded it was not possible to use provisional measures to protect a generic class of individuals who are in a similar situation or who are subject to certain policies. Consequently, the Court issued provisional measures calling on the Dominican Republic to take the following steps: implementing all necessary measures to protect the lives and physical integrity of the individually named victims, as well as the two witnesses who testified before the Court; refraining from expelling individuals on a collective basis; permitting the return of the individually named victims who had been expelled; and submitting information concerning the *bateyes* which may be subject to forced expulsion from the country.

In a concurring opinion, Judge A.A. Cançado Trindade stated that provisional measures should not be restricted to cases involving possible violations of the right to life and physical integrity. Provisional measures in the present case should be extended to protect other rights in the American Convention, including the right to personal liberty, the rights of the child, and the freedom of movement and residence. The concurrence also distinguished between requesting provisional measures for an undefined community and for a community whose members can be readily identified individually. In this sense, the provisional measures are aimed to protect the individual members who comprise the Community, rather than the Community as a whole.

INTER-AMERICAN COMMISSION CASES

Friendly Settlement

Caso Edison Patricio Quishpe Alcívar; Caso Angelo Javier Ruales Paredes; Caso Byron Roberto Cañaverall; Caso Carlos Santiago and Pedro Andrés Restrepo Arismendy; Caso Kelvin Vicente Torres Cueva; Caso Manuel Inocencio Lalvay Guamán; Caso Carlos Juela Molina; Caso Marcia Irene Clavijo Tapia (Ecuador)

Facts: Individual petitions were filed with the Commission between November 8, 1994, and December 10, 1997, alleging that the State of Ecuador had violated its obligation to respect 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 rights of the child (Article 19), the right to equality before the law (Article 24), and judicial protection (Article 25) in the American Convention. The petitions included two brothers, both minors, who were arbitrarily detained, tortured, and then disappeared by members of the National Police (*Case of Carlos Santiago and Pedro Andrés Restrepo Arismendy*). Later investigation by a governmental Special International Commission determined that the bodies of the two minors had been disposed of in a local lake. The *Case of*

Kelvin Vicente Torres Cueva involved the arbitrary arrest and torture of the petitioner, followed by 38 days of incommunicado detention by members of the National Police. Other petitions alleged acts of torture after arrest and during detention by members of the local police (*Case of Angelo Javier Ruales Paredes; Case of Carlos Juela Molina; Case of Byron Roberto Cañaverall; Case of Manuel Inocencio Lalvay Guamán, and Case of Edison Patricio Quishpe Alcívar*).

Decision: All of the petitions were submitted to the friendly settlement process in accordance with Article 45 of the Commission’s Regulations and Articles 48(f) and 49 of the American Convention. The State of Ecuador admitted its international responsibility for the human rights violations against the petitioners and agreed to make reparations in the form of monetary damages. As part of the friendly settlement agreement in each case, the State agreed to investigate those responsible for the violations and to hold them civilly and criminally liable. While Ecuador has provided monetary compensation to each of the petitioners (with the exception of the *Case of Angelo Javier Ruales Paredes*), it has yet to fulfill its obligation to investigate, prosecute, and punish those responsible for the violations. In the *Case of Carlos Santiago and Pedro Andrés Restrepo Arismendy*, the State has yet to organize and carry out a search for the bodies of the victims whom state agents disappeared. As a result, the Commission retained jurisdiction over each of the cases in order to monitor the State’s compliance with the terms of the friendly settlement agreements.

New Regulations of the Inter-American Commission on Human Rights

The Inter-American Commission has drafted new Regulations that will take effect beginning May 1, 2001. The following procedures are the most substantial changes to the Regulations: the processing of petitions at the admissibility and the merits stages of the proceedings; the procedure for submitting cases to the Inter-American Court; and the use of testimony from witnesses and experts.

Processing Petitions

Article 36 of the new Regulations provides for a Working Group to be established that will make recommendations on the admissibility of petitions prior to the regular session of the Commission. The Commission will then make a final determination on admissibility and issue a report to be published in the Annual Report. If the case is deemed admissible, it will be opened formally and will proceed to a determination on the merits. In exceptional circumstances, the Commission may formally open a case and postpone the admissibility determination until after a decision has been made on the merits of the case.

After deliberating on the merits of each case, the Commission will adopt a preliminary report containing its conclusions and recommendations to the State Party. While the State is given time to respond to the preliminary report, the Commission will offer the petitioner the opportunity to present his or her views concerning the submission of the case to the Court. The Regulations list the following five criteria petitioners should address in response to the request from the Commission, if the petitioner wishes the case to be submitted to the Court: the position of the victim or the victim’s relatives; information on the victim and his or her relatives; the reasons why the case should be submitted; the type of evidence available, including testimony of witnesses and experts; and any suggested forms of reparations.

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Submission of Cases to the Inter-American Court

If the State has failed to take the measures recommended in the preliminary report issued by the Commission, the case will automatically be submitted to the Court pursuant to Article 44 of the new Regulations. The only exception provided for in the Regulations is if, by an absolute majority, the Commission votes not to send the case to the Court. The Court took the following factors into consideration in this decision: the position of the petitioner; the nature and gravity of the violation; the necessity of further developing or clarifying jurisprudence of the Inter-American human rights system; the effect the decision will have on the domestic legal regimes of the Member States; and the quality of evidence available in the case. Should the Commission decide not to submit the case, or if the responding state has not accepted the contentious jurisdiction of the Court, then the Commission will publish a report containing its final conclusions and recommendations.

Evidence from Witnesses and Experts

According to Article 63 of the new Regulations, either party in a case may present witnesses or experts to testify at a hearing before the Commission. The party relying on such evidence will have to make a formal request for the testimony to be heard, after which the Commission will decide whether to accept the testimony. Only in extraordinary cases will a witness be allowed to testify when the opposing party has not been notified prior to the hearing of the testimony. In those cases, every effort will be made to guarantee fair proceedings. One of the more noticeable changes in the new Regulations concerns the distribution of the costs of producing evidence or testimony for a hearing before the Commission. According to Article 67 of the new Regulations, the party requesting the production of evidence at the hearing will be responsible for paying the costs associated therewith. 🌐

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compliance. Because India considers international intervention into such matters to be an unlawful interference with sovereign domestic affairs, enforcement of international law is slow and often has minimal influence on India.

Domestic Movements to Improve Dalit Living Conditions

In response to India's failure to ensure Dalit rights, NGOs throughout India seek to relieve the plight of Dalits through lobbying and education campaigns. Activists like Martin Macwan, Convenor of the National Campaign for Dalit Human Rights and recipient of the 2000 Robert F. Kennedy Award for Human Rights, continue to rally on behalf of Dalits to educate the domestic and international community about Dalit conditions. Other organizations such as the International Campaign on Dalit Human Rights, Ambedkar Centre for Justice and Peace, and the Center for Justice and Peace in South Asia, all work to represent Dalits in the domestic and international arena.

Due to the efforts of these domestic human rights organizations, the UN plans to address the condition of Dalits in the August 2001 session of the Sub-Commission on the Promotion and Protection of Human Rights (Sub-Commission). The Sub-Commission passed a resolution in its 52nd session, titled "Discrimination Based on Work and Descent," denouncing caste discrimination as a violation of human rights law and mandating preparation of a working paper for the August 2001 meeting. In September 2001, the UN will also address the situation of Dalits at "The World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance" (Conference) in South Africa. In February 2001, Indian External Affairs Minister Jaswant Singh denounced efforts to address Dalit rights during the Conference by saying, "there has regrettably been an attempt by some to dilute the focus of this conference by broadening its scope to bring all forms of discrimination within its ambit. An attempt is being made to ascribe racial connotations to caste. We must ensure that the conference does not lose sight of its focus on racism . . . racism should not be confused with discrimination in general." Contrary to India's attempts to distinguish caste discrimination from the evils of racial discrimination, both caste and racial discrimination involve

Although the Indian government denies the problem of mistreatment of Dalits . . . the numerous reports of violence and discrimination indicate that Dalits remain India's "broken people."

invidious distinctions used to oppress a group of people on the basis of arbitrary characteristics. The effects of both types of discrimination are equally destructive; therefore, the Conference is rightfully charged with the task of examining racism along with other types of xenophobia and intolerance. The provisional agenda of the Conference includes examining sources of intolerance, victims of intolerance, preventative measures against intolerance, redress for intolerance, and strategies for achieving full tolerance. The efforts of the UN and the Conference are significant steps in drawing international attention to the plight of India's Dalit community.

Conclusion

Although India has made measurable progress in terms of the protections afforded to Dalits since independence, Dalits still suffer invidious discrimination and mistreatment at the hands of upper caste members and law enforcement officials. Such mistreatment is inexcusable under both India's domestic laws and its obligations under international law. Although the Indian government denies the problem of mistreatment of Dalits and points to extensive legal protections evidencing compliance with international standards, the numerous reports of violence and discrimination indicate that Dalits remain India's "broken people." Until the atrocities against Dalits end, the international community ought to continue to publicize the conditions of India's disenfranchised population and encourage India to live up to the standards established in its domestic laws and international obligations. 🌐

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