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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

Caso Barrios Altos (Peru)

Facts: On November 3, 1991, six heavily armed members of the Peruvian military burst into a building in the neighborhood of Barrios Altos, in Lima, and indiscriminately shot at the individuals inside for approximately two minutes. As a result, fifteen individuals were killed and four people were critically injured. Subsequent newspaper reports and an investigation by members of the Peruvian Congress indicated that government forces carried out the massacre in retaliation against members of the armed resistance group *Sendero Luminoso* (Shining Path). A judicial investigation in 1995 identified five of the six members of the military who were responsible for the massacre. The criminal investigation against those responsible proceeded in the Supreme Court for Military Justice. The prosecution and punishment of those individuals was blocked, however, by the passage of Amnesty Law Number 26479 on June 14, 1995, which exonerates members of the police and military as well as civilians who were responsible for human rights violations committed between 1980 and 1995. On June 16, 1995, after a judge on the Sixteenth Criminal Court of Lima declared that the amnesty law violated constitutional guarantees and international obligations under the American Convention on Human Rights (Convention), the Peruvian Congress passed Amnesty Law Number 26492, which broadened the scope of the previous amnesty law. The Congress further declared that Amnesty Law Numbers 26492 had to be applied to every case and was not reviewable by a court of law. This prevented the criminal prosecution and punishment of those responsible for the Barrios Altos massacre.

On August 28, 1995, the Inter-American Commission on Human Rights (Commission) received information about the massacre from the National Coordinator of Human Rights in Peru. On June 8, 2000, the Commission submitted the case to the Inter-American Court of Human Rights (Court) to decide whether Peru had violated the Convention by failing to investigate and punish those responsible for the massacre at Barrios Altos. The Court also was asked to determine whether Amnesty Law Number 26479 and 26492 violated the Convention by preventing the prosecution and punishment of those responsible for human rights violations.

Decision: On March 14, 2001, the Court unanimously concluded that the deaths that occurred as a result of the massacre violated the right to life (Article 4 of the Convention), the right to personal integrity (Article 5) was violated in respect to the other victims who were injured. Peru also violated the right to a fair trial (Article 8), the right to judicial protection (Article 25), its obligation to respect rights (Article 1(1)), and its duty to guarantee domestic legal effects of the Convention (Article 2) as a result of the passage and application of the amnesty laws. The Court emphasized that the amnesty laws were incompatible with the Convention and therefore lacked juridical effect. On February 19, 2001, Peru accepted its international responsibility for the human rights violations that occurred at Barrios Altos and agreed to work with the Commission, the victims, and their families in determining the appropriate reparations for the violations.

INTER-AMERICAN COMMISSION

“Third Report on the Human Rights Situation in Paraguay”

On April 12, 1999, the government of Paraguay invited the Commission to carry out an *in loco* visit to observe the general human rights situation in the country. Members of the Commission conducted this visit on July 28–30, 1999. While in Paraguay, the Commission met with members of the executive, legislative, and judicial branches of the government, as well as non-governmental organizations, including human rights organizations, religious organizations, indigenous groups, labor unions, and victims of human rights violations. The Commission held meetings in order to resolve several contentious cases before the Commission through the friendly settlement process. After Paraguay was allowed time to present observations on the Commission’s findings, the “Third Report on the Human Rights Situation in Paraguay” (Report) was issued on March 9, 2001.

The Report reviewed the transition from a dictatorship under General Alfredo Stroessner to a representative democracy in Paraguay beginning in 1989. The Commission detailed a series of attacks on the government, including the assassination of Vice-President Dr. Luis María Argaña on March 23, 1999; the resignation of President Cubas Grau on March 28, 1999; and an attempted coup d’etat on May 18, 2000. In response to the attempted coup, the government declared a state of emergency and on May 19, 2000, suspended certain rights under the Convention. On May 31, 2000, the state of emergency was suspended.

The Report observed that corruption and impunity are the greatest obstacles to advancing human rights in Paraguay. It concluded that governmental corruption, especially by judges, undermines the legitimacy of democracy in the country and results in the violation of human rights under the Convention, including the right to a fair trial (Article 8(1)) and the obligation to respect rights (Article 1(1)). The Commission also emphasized that governmental corruption drains the financial resources of the country and impedes the progressive development of social, economic, and cultural rights.

The Report analyzed the continued state of impunity for violations of human rights that occurred during and after the dictatorship. The Report emphasized that there is no legal impediment, such as an amnesty law, to prevent the prosecution and punishment of those responsible for grave human rights violations. Paraguay’s failure to take action is a breach of its duty to carry out effective investigations and trials of those responsible for gross human rights violations during the dictatorship as required by Articles 1(1), 8, and 25 of the Convention. The Commission urged the Paraguayan Congress to appoint an Ombudsman, as provided for in Paraguay’s 1992 Constitution, who would be responsible for receiving and investigating complaints of human rights violations and for ensuring that victims of human rights violations are compensated. The Commission also recommended the creation of a truth commission to review information contained in the “Archives of Terror,” which contain detailed records of human rights violations that occurred during the dictatorship and provide information about the Operation Condor conspiracy during the 1970s, and report on the human rights violations that occurred during the dictatorship of General Stroessner. 🌐

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