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Selected Coverage of the 149th Session of the Inter-American Commission on Human Rights

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SELECTED COVERAGE OF THE 149TH SESSION OF THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

Below are three selected summaries of hearings at the 149th Session. For summaries of all hearings in both Spanish and English, please visit www.hrbrief.org.

CASE 12.792 MARIA LUISA ACOSTA ET AL., NICARAGUA

On October 29, 2013, María Luisa Acosta Castellón presented before the Inter-American Commission on Human Rights (the Commission) on how the state of Nicaragua, through irregularities in the trial proceedings, granted impunity to those responsible for the murder of her husband, Francisco García Valle. Mrs. Acosta, an attorney for indigenous peoples, maintains that when her husband was murdered on April 8, 2002, the murderers meant to target her but found her husband instead. She believes she was at risk of losing her life because her work interfered with state business in the territory of indigenous peoples. The criminal proceedings that followed the murder were, Mrs. Acosta maintains, inadequate and irregular.

Mrs. Acosta, the Center for Legal Assistance for Indigenous Peoples (CALPI), the Center for Justice and Human Rights of the Atlantic Coast of Nicaragua (CEJUDHCAN), and the Nicaraguan Center for Human Rights (CENDIH) filed the complaint with the Commission on June 22, 2007, alleging violations of Articles 4, 5, 8, 11, and 25 of the Inter-American Convention on Human Rights (the American Convention). With regard to the allegations of violations of Articles 5, 8, and 25 of the American Convention, the Commission found the petition admissible on November 1, 2010. The Commission convened the hearing on October 29, 2013 to decide upon the merits of the case.

At the hearing, Mrs. Acosta detailed how the irregularities in the criminal proceedings led to violations of Articles 5, 8, and 25: the rights to humane treatment, fair trial, and judicial protection. According to petitioners, the authorities failed to properly collect evidence, and the judge then



Case 12.792 Maria Luisa Acosta v. Nicaragua. Photo Courtesy of Inter-American Commission on Human Rights

acquitted two of the alleged murderers based on a lack of evidence. The alleged perpetrators were acquitted 22 days after being accused of murder. Additionally, petitioners presented that, when Mrs. Acosta attempted to appeal the acquittal, the appellate level court and the Supreme Court of Justice of Nicaragua rejected her request because she had not filed the necessary copies of the judgment in time. Mrs. Acosta argued that her attorney attempted to file the copy but was denied the ability to do so. Finally, Mrs. Acosta maintains that, during the trial proceedings, the Court treated her as a defendant, held in pretrial detention, and subjected her to degrading treatment. The judge refused to allow her lawyer to represent her, and the Court did not provide her with counsel. Petitioners argued that economic interests influenced the court. Petitioners asked the Commission to request that Nicaragua investigate the matter, repair moral and material damages, enforce the law on requirements for justice, and acknowledge mistakes made in accusing Mrs. Acosta.

Nicaragua maintains that it did not violate Articles 5, 8, and 25 and that the criminal proceedings were not irregular. The representative for Nicaragua argued

that the authorities investigated the matter adequately, and that Mrs. Acosta was appropriately charged as an accomplice. Additionally, the state argued that the procedural rules for appeals require the petitioner to provide a photocopy of the judgment within twenty-four hours and, since petitioner did not fulfill the requirement, the appeal was appropriately denied.

The Commissioners' posed questions to the parties primarily about the photocopying requirement for an appeal. Commissioner Rose-Marie Antoine, who is also the Special Rapporteur for Nicaragua, first acknowledged that the issue is a complex one in which the petitioner is also a human rights defender, a status to which the Commission affords special protection. She then expressed concern that the requirement to provide paper for the photocopy might be an obstacle to the right to a fair trial. She also asked for additional clarification as to whether Mrs. Acosta was formally charged and acquitted or treated as a defendant during the proceedings without a formal charge. Similarly, Rodrigo Escobar Gil wanted to know whether the photocopy requirement is usually enforced. He also wanted to know what the Supreme Court precedent

is on the requirement. Assistant Executive Secretary, Elizabeth Abi-Mershed, asked for more information on why the proceedings against Mrs. Acosta took three years when the proceedings against the acquitted men lasted 22 days.

In their comments, the Commissioners were particularly concerned about both the obstacles to fair trial as demonstrated by this case and the mistreatment of a human rights defender. After both parties were given a chance to reiterate their main points in response to the Commissioners' questions, the Commission promised to respond as soon as possible.

Brittany West covered this hearing for the Human Rights Brief.

HUMAN RIGHTS, DEVELOPMENT, AND EXTRACTIVE INDUSTRIES IN COLOMBIA

Petitioners representing various Colombian human rights groups presented their concerns regarding the environmental and cultural impact of large industrial projects, such as hydroelectric dams and mining, before the Inter-American Commission on Human Rights (IACHR). In their October 31st hearing, petitioners described the vast environmental richness in Colombia and the disproportionate number of indigenous groups, farmers, and Colombians of African descent who are impacted by these projects.

Expressing urgent concern that local communities are not a part of the planning process for large industrial projects that have a direct effect on their lives, petitioners called attention to international standards that require consultation with local populations when their communities are impacted. Petitioners stated that people have been forcibly displaced due to these projects and that any opposition to this type of construction often leads to stigmatization by the government and corporations. In addition, petitioners asserted that development projects lack government oversight and instead place a premium on economic value rather than the serious impact of mega projects on communities. Petitioners also called attention to the various cultures that could be completely wiped out due to the mega projects because entire areas are flooded by the hydroelectric dams and government

compensation is allegedly not adequate to cover the damage caused.

The petitioner's requests to the state and to the Commission, included the following: a Commission site visit; a Colombian policy of collective protection; an end to the stigmatization of individuals and groups who oppose mega projects; and community consultation for each mega project, consistent with the Colombian Constitution's protection against inequality and discrimination.

In response to the petitioners' presentation, the state asserted that since Colombia is a developing and modernizing country that is fighting against poverty and inequality, it is in the best interest of all Colombians to grow and develop through large industrial projects. The state claimed they are trying to strike a balance of interests, and consequently one sector may initially benefit from development while another is restricted. The state asserted that hydroelectric energy is clean energy and the state is trying to provide energy to millions of citizens who are currently without power. The state also claimed that it works jointly with corporations, the government, and civil society within an international framework to promote human rights issues at the corporate level.

The state then claimed that any citizen or group can request public hearings or

participate in prior consultation meetings, before mega projects begin. In addition, according to the state representative, the government complies with the law internally in every proceeding on this issue and advances the quality of life of all Colombians.

Following the presentations, Commissioners inquired about how prior consultations were conducted and what type of information was available regarding environmental impact studies. Commissioner Dinah Shelton, Special Rapporteur on the Rights of Indigenous Peoples, noted that the Commission is not against development, but that development must be consistent with human rights principles. Commissioner Shelton asked several questions, mostly in response to the State's presentation: whether the corporate responsibilities discussed by the state applied only to domestic companies, or also to foreign investments; whether there was remediation in the case of closed mines; and whether project notifications were available only in Spanish or also in local languages. Commissioner Shelton also reminded the state that hydroelectric energy is not without environmental consequences and that the responsibility and accountability to respect human rights cannot be delegated to companies.

Whitney-Ann Mulhauser covered this hearing for the Human Rights Brief.



Human Rights, Development, and Extractive Industries in Colombia. Photo Courtesy of Inter-American Commission for Human Rights

REPORTS OF VIOLENCE AGAINST TRANS PEOPLE IN EL SALVADOR

On October 29, 2013, the Inter-American Commission on Human Rights (IACHR) held a hearing on reports of violence against trans people in El Salvador. The petitioners, advocates for trans rights from several organizations, spoke on the systematic discrimination and violence directed at trans people and the failure of the government to respond appropriately. The petitioners contend that, while the recent government has taken positive steps to improve the lives of trans people, these steps have been limited to the realm of healthcare.

In El Salvador, as described by petitioners, trans people are largely excluded from voting in El Salvador, and there is no legal way for them to change their IDs to reflect their gender identity. Additionally, there are no anti-discrimination or hate crime laws, and the petitioners allege that the police rarely investigate crimes against trans victims. According to petitioners, this lack of prosecution allows brutal crimes to be committed against the LGBTI population with impunity. At least 145 trans individuals have been murdered, often having first been tortured and mutilated. The petitioners asked the state of El Salvador to end the impunity that facilitates these crimes. Further, they asked the state to pass laws giving the trans community equal access to society, education, and work.

Representatives from El Salvador began their comments by stating they were appearing before the commission as a show of the state's commitment to human rights, and that they were willing to provide any information requested by the Commission. The Undersecretary of Social Inclusion agreed that the rights of trans people is an important topic that has not yet attained the needed recognition and outlined the steps El Salvador is taking to address the issue.

Since 2009, El Salvador created the Secretary of Social Inclusion, which includes an office of sexual diversity, to promote the protection and integration into society of minority groups. In 2010, Executive Order 56 was issued in an effort to prevent discrimination based on gender identity and expression.



Reports of Violence against Trans People in El Salvador. Photo Credit: Inter-American Commission on Human Rights

It ordered the prosecution of public officials who discriminate on the basis of sexual orientation or gender identity. Further, the state contended that it has sought to create safe spaces for LGBTI people to foster a dialogue on what is needed and that it has included trans people in the legislative decision-making process.

The Ministry of Health issued its own protocol to respect gender identity in 2009, hires trans people, and includes trans people in campaigns for diversity and HIV/AIDS. El Salvador has also initiated trainings for police officers, judges, and prosecutors to improve the government response to discrimination and crimes against trans people. In connection with these efforts, the government also started a toll-free hotline that provides support and information for the LGBTI population that can also be used to report crimes to the police. Finally, El Salvador noted that discrimination based on gender identity is a structural problem and that the State is just beginning its work to bring about systematic change. The Undersecretary thanked the petitioners for their testimony and acknowledged that their voices were essential to the dialogue.

The Commissioners stressed that the government has an obligation to respond to discrimination and protect the rights of the LGBTI population. The

Commissioners urged El Salvador to create specialized units and courts dedicated to investigating and prosecuting crimes based on the gender identity of the victims. The Commissioners asked the government for more information on anti-discrimination laws, whether there was appropriate hate crime legislation, and which specific discriminatory acts committed by civil servants are prosecuted. In addition, the Commissioners urged the government to educate the public and promote culture change. Finally, the Commissioners recognized trans people as human rights defenders and important agents of cultural change.

In its concluding remarks, the state said it was taking steps to foresee any legal or constitutional challenges to resolve the problems highlighted in a UN general assembly report on LGBTI rights. The state's representative, however, expressed his belief that ensuring those rights would strengthen the constitution of El Salvador. The petitioners reiterated that trans people are living in fear because of widespread violence and the failure of the state to intervene. They urged the state to work with the Commission to ensure their security and to aggressively prosecute crimes against the trans population.

Jason Cowin covered this hearing for the Human Rights Brief.

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