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AMERICAS

RETALIATION: THE ABUSIVE AFTERMATH OF REPORTING SEXUAL ASSAULT IN THE MILITARY

According to a report titled “Embattled,” Human Rights Watch (HRW) estimates at least sixty-two percent of military sexual assault victims experience some form of personal or professional retaliation after reporting an assault through standard military channels. The Department of Defense, NGOs, and several initiatives have extensively researched the causes and consequences of retaliation that many survivors face. Although the military has made significant advances in recognizing and reporting sexual assault within its ranks, the U.S. is additionally bound by its obligations under the United Nations (UN) Convention Against Torture to ensure victims receive appropriate protections.

Retaliation can take many different forms, with varying levels of severity, and the military rarely holds accountable those who punish or blame reporting victims. The Department of Defense estimates that only one in four victims report sexual assaults to the appropriate military authorities. Victims’ fears about professional and personal backlash weigh significantly on their willingness to report sexual assault.

HRW notes that many victims who do report often state that the abusive aftermath of reporting sexual assault is more dehumanizing than the assault itself. Victims who report often risk their careers within the military, a consequence often not faced by those who perpetrate the assaults. Many survivors recounted major changes in the work assigned to them. Most were moved from high-level tasks that require training and expertise to more menial tasks like collecting garbage. Survivors are regularly passed over for promotions and training. Many tell of how their performance evaluations plummeted. Reporting can also open up a survivor to excessively severe scrutiny in the form of disciplinary actions. The military’s disciplinary system exacerbates retaliation against victims

by allowing his or her superior to take different administrative actions to enforce “good behavior and discipline.” Superiors who retaliate against a reporting victim often use these actions to punish and to discourage a victim from pushing his or her case forward.

As a party to the UN Convention Against Torture, which it ratified in 1994, the U.S. is obligated to comply with its provisions. Moreover, the Committee Against Torture (CAT) is authorized to supervise the implementation of the Convention. In 2014, CAT reminded the U.S. government of its obligation to protect victims and to ensure their rights before and after reporting. CAT recommended that the U.S. ensure the protection of victims who come forward from ill treatment or intimidation throughout the reporting process.

CAT recommends reforming the standards and procedures of military justice and upholding the legal obligations of the Convention Against Torture, steps critical to ending the abuse and victimization of women and men who serve in all branches of the U.S. military. As a party to the Convention Against Torture, the U.S. is obligated to provide “prompt, impartial, and effective” investigations of allegations of sexual violence, ensure complainants and witnesses are protected from retaliation and reprisals, and ensure equal access to compensation for survivors.

In the U.S., Supreme Court precedent prohibits members of the military from bringing claims for any injuries suffered during the course of their service. Sexual violence falls into this category, as do some violations of a service member’s constitutional rights. Additionally, federal courts of appeals have barred veterans from bringing gender discrimination claims under Title VII of the Civil Rights Act. Typically, Title VII would hold employers accountable for sexual harassment and misconduct.

In its Sexual Assault Prevention and Response Fact Sheet, the Department of Defense estimates that around 8,500 women and 10,500

men experience unwanted sexual contact while serving in the military. An untold number of these veterans will not report their assaults out of fear for their careers, physical safety, and emotional wellbeing. In order to truly eradicate the pervasiveness of sexual violence within the military, organizations like HRW believe that the U.S. must improve outreach and strengthen whistleblower protection for victims of military sexual assault both before and after reporting.

By Lindsey White, staff writer

THE RIGHT TO NATIONALITY IN THE DOMINICAN REPUBLIC

Until 2013, anyone born in the Dominican Republic (DR) gained citizenship automatically. In September 2013, the Constitutional Court of the DR (Law 168-13) stripped citizenship of persons who could not prove that at least one of their parents was Dominican. The ruling applied to people born between 1929 and 2010, a group of approximately 240,000 Dominicans, the majority of whom were of Haitian descent. Due to the international condemnation of Law 168-13 in 2014, the DR government passed Special Law 169-14 to reinstate citizenship. This law placed people into two groups: Group A and Group B. Group A applies to those already registered in the Dominican Civil Registry who must go through a process of nationalization implemented by the Central Electoral Board. Group B applies to those born in the DR never registered in the Dominican Civil Registry. They must go through a lengthy process that reclassifies them as foreigners, and after two years, they may gain Dominican citizenship. Human Rights Watch (HRW) reported that many registered still faced discrimination and have difficulty obtaining birth certificates or registering their children in school. Others have faced deportation.

While the DR was sorting out the registration process for stateless Dominicans, the government implemented a National Regularization Plan in December 2013 to grant legal status to migrants so they can obtain citizenship or residency status. As part of the plan, the almost half a million undocumented workers

in the Dominican Republic had to register with the government by June 17, 2015 or face deportation. Even though more than two-thirds of undocumented migrants or Dominicans of Haitian descent did register successfully, only two percent gained legal status. However, ninety-six percent of those who have applied for legal status do not have passports or identification documents from their home country. Moreover, many believe that the immigration policy is a xenophobic ploy to rid people of Haitian descent from the DR. As a result, since June 2015, Haitian migrants and Dominicans of Haitian descent, the majority of whom are poor or working class, have fled the DR to neighboring Haiti, either voluntarily or by force. Approximately 66,000 people have gone back to Haiti.

In response, the DR argues that Haiti is using the DR's legitimate effort to fix its immigration problem as diversion away from its social and political problems. The DR states that it is enforcing its immigration laws by deporting those without legal documents, an immigration rule that governs any country that abides by the rule of the law. Jose Tomas Perez, the Ambassador of the DR to the U.S., explains that the policies that the DR has implemented will protect migrants' human rights and give legal status to people of Haitian descent who did not have them to begin with. He vows that the DR will not deport those born in the DR or unaccompanied minors. Furthermore, he promises that indiscriminate deportations will not occur, and that the government will investigate any acts targeting Haitian migrants. Ambassador Perez also emphasizes that the DR's citizenship policies are similar to those of Europe and other Caribbean countries, where citizenship is not a birthright.

Rights groups have called into question the legality of the Dominican Republic's immigration policies, criticizing Laws 168-13 and 169-14 as violating the fundamental right to nationality. The American Convention on Human Rights, which the Dominican Republic has ratified, codifies this fundamental right in Article 20. Article 20 of the Convention provides that "no one shall be arbitrarily deprived of their nationality," and that "every person has the right to the

nationality of the state in whose territory he was born if he does not have the right to any other nationality.” Law 168-13 left many Dominicans of Haitian descent virtually stateless, possibly violating Article 20 of the Convention.

Although Law 169-14 attempts to rectify the situation, it does not automatically reinstate citizenship. Moreover, Law 169-14 converts members in Group B, who are Dominican citizens, into foreigners. The DR’s National Regularization Plan may also be a violation of fundamental human rights. Under Article 3 of the Draft Articles on the Expulsion of Aliens, it is an inherent right of a state to expel aliens from its territory. However, Article 3 places a limit on expulsion, stating, “expulsion shall be . . . without prejudice to other applicable rules of international law, in particular those relating to human rights.” It is a violation of the Universal Declaration of Human Rights for a state to expel an alien arbitrarily from its borders. An arbitrary expulsion is one that is unjust or oppressive based on subjective criteria. Furthermore, Article 14 of the Draft Articles on Expulsion of Aliens prohibits discriminatory expulsion based race, nationality, or ethnicity. Thus, while the Dominican Republic has the right to expel undocumented people from its borders, it does not have the right to expel people for discriminatory reasons, or to deprive people with no other nationality of their Dominican nationality. On October 23, 2015, the Inter-American Commission on Human Rights scheduled a hearing on the Right to Nationality in the Dominican Republic to address the issue.

By Marie Durané, staff writer

AYOTZINAPA MASS DISAPPEARANCES

September 26, 2015, was the one-year anniversary of the disappearance of forty-three male students in Iguala, Mexico. One year earlier, the Iguala Municipal Police attacked students from the Raúl Isidro Burgos Normal School in Ayotzinapa. Out of the one hundred students, forty-three faced detainment and later disappeared. The Mexican government claimed that the police handed over the forty-three students to the local narco-trafficking gang, Guerreros Unidos,

who killed the students and burned their bodies in a trash dump in Cocula. The Ayotzinapa case brought the human rights situation in Mexico under international spotlight. Between 2007 and 2014, over 23,270 persons disappeared; of these, the authorities have only located 102. Human rights organizations are urging Mexico to take the necessary steps to stop enforced disappearances in compliance with the International Convention for the Protection of All Persons from Enforced Disappearance (ICPPED) and the Inter-American Convention on Forced Disappearance of Persons (IACFD). Mexico is a State Party to both treaties.

Ayotzinapa students and the families of the boys who disappeared reacted angrily to the government’s version of the incident, claiming that the proffered evidence was inconclusive and insisting that their children were alive. In November 2014, the Mexican government, under growing domestic and international pressure, entered into an agreement with the legal representatives of the students and their families to request technical assistance from the Inter-American Commission on Human Rights (IACHR). In January 2015, the IACHR appointed five renowned experts on criminal prosecution and human rights to form an Interdisciplinary Group of Independent Experts (GIEI). The group had three primary objectives: to draw up plans for searching for the disappeared persons who could still be alive, to provide technical analysis to the investigation to determine criminal liability, and to undertake a technical evaluation of Mexico’s Comprehensive Plan for Attention to the Victims (Plan de Atención Integral a las Víctimas), providing general guidelines to ensure compensation and access to information for victims of crimes.

On September 6, 2015, after a six-month investigation, the Group released a report concluding that the Mexican government’s version of the events was “wrong and not substantiated by scientific evidence.” The report negated the Mexican government’s version and focused on the motive behind the attack. The Mexican government claimed that the Guerreros Unidos mistakenly believed that the students were

members of a rival narco-trafficking gang. However, the report suggests that the Guerreros Unidos carried out the attack to block the students from leaving Iguala in a bus used to transport money and heroin to the U.S. The report further claims that no other police force of the state took action to protect the students “in spite of having knowledge of the facts or being present at some of the crime scenes.” Experts gave three key recommendations to the Mexican government: to continue the search of the missing forty-three boys, to open new lines of investigation, and to investigate all authorities who obstructed the initial investigation.

The report also addresses the issue of enforced disappearances in Mexico, advising Mexico to pass comprehensive legislation regarding enforced disappearances as required by Article 4 of the ICPPED. Article 4 creates an obligation for every state “to take the necessary measures to ensure that enforced disappearances constitute an offence under the state’s criminal law.” The GIEI report also urges the Mexican government to satisfy the right to truth for the victims’ families, granting adequate access to information. Article 24(2) of the ICPPED establishes the right of the victims “to know the truth regarding the circumstances of the enforced disappearance, the progress and results of the investigation and the fate of the disappeared person.” Finally, the GIEI called for the establishment of protocols to search for the disappeared persons in order to effectively comply with Article 24(3) of the ICPPED, which calls for each state to “take all appropriate measures to search for, locate, and release disappeared persons and, in the event of death, to locate, respect, and return their remains.”

Human rights organizations like Amnesty International and the Washington Office of Latin America strongly criticized the government and expressed their concern about “the government’s grave mishandling of the case.” Human Rights Watch has defined the ongoing situation as the “worst human rights crisis in Mexico since 1968.” Moreover, human rights organizations are pressuring the Mexican government to implement the recommendations stated in the

GIEI report in order to put an end to mass disappearances. Failure to comply with the IACHR report’s recommendations may constitute a violation of Mexico’s obligations under the ICPPED and the IACFD.

THE U.S. RESPONSE TO THE UNIVERSAL PERIODIC REVIEW RECOMMENDATIONS

Following the second Universal Periodic Review (UPR) of the United States, the United Nations Human Rights Council (HRC) adopted its concluding report regarding the U.S.’ human rights record on September 24, 2015. The review process allowed Member States of the HCR to assess the U.S.’ compliance with its human rights obligations under the Charter of the United Nations, the Universal Declaration of Human Rights (UDHR), and every human rights instrument the United States is party to and to give recommendations. The review resulted in 343 recommendations on human rights issues such as racial discrimination, the closing of the detention center at Guantánamo Bay, the abolition of the death penalty, and the ratification of additional human rights treaties.

Most of the recommendations focused on the issue of racial discrimination. The recent cases of police killing young African-Americans drew the international community’s attention to the state of minority relations and discrimination in the U.S. Many states urged the U.S. to take additional measures to fight racial discrimination, such as implementing programs to improve police-community relations and investigating the root causes of police brutality and discrimination. In response, the U.S. pointed to its ongoing work to solve the problem of discrimination. In particular, the American delegation mentioned the Department of Justice’s work in bringing criminal charges against police officers, about 400 in the last four years. The U.S. showed its commitment to fight against racial discrimination by accepting almost every recommendation on the subject. In addition, the U.S. made a few important pledges to eliminate racial bias in the administration of capital pun-

ishment.

The review also addressed the detention camp at Guantánamo Bay, with many states urging the U.S. to shut down the facility. The U.S. reaffirmed President Obama's commitment to close the detention center at Guantánamo Bay but rejected the premise that the country was detaining prisoners at Guantánamo illegally.

The U.S. is required to follow the recommendations regarding racial discrimination in police practices under the Convention on the Elimination of All Forms of Racial Discrimination (CERD) and the UDHR. In particular, Article 5(b) of the CERD requires that States Parties guarantee to everyone, without distinction of race, "the right to security of person and protection by the State against violence or bodily harm, whether inflicted by government officials or by any individual group or institution." Article 7 of the UDHR states that "all are entitled to equal protection against any discrimination."

The recommendations that call for the closing of the detention facility at Guantánamo Bay resonate with the obligations that the U.S. has under the UDHR, the International Covenant on Civil and Political Rights (ICCPR), and the Convention Against Torture (CAT). Article 5 of the UDHR and Article 7 of the ICCPR state that "no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment." Article 10(1) and (2) of the ICCPR require respectively that "all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person" and that "the penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation." Article 2(1) of the CAT calls on every State Party to "take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction." Finally, Article 11 of the CAT requires states to "keep under systematic review interrogation rules, instructions, methods, and practices as well as arrangements for the custody and treatment of persons subjected to any form of arrest, detention or imprisonment in any territory under its jurisdiction, with a view to

preventing any cases of torture."

Following the formal adoption of the UPR in Geneva, the United States has four years to implement the accepted recommendations. Human Rights Watch criticized the U.S. for not effectively implementing the recommendations accepted in the first UPR in 2010 and expressed its concern that the United States might "use the process more as a way to highlight its current policies than to commit to improving its record on human rights at home." Failure to take adequate steps to comply with the final recommendations may constitute a violation of the United States' obligations under the UDHR, the ICCPR, the CAT, and the CERD. The Human Rights Council will decide on the measures to take in case of persistent non-cooperation by a state with the UPR.

By Chiara Vitiello, staff writer

A REBELUTIONARY AGREEMENT IN COLOMBIA

On September 23, 2015, Colombian President Juan Manuel Santos and the top leader of the Revolutionary Armed Forces of Colombia People's Army (FARC-EP), Rodrigo Londoño Echeverri, signed a preliminary agreement in La Habana, Cuba on the issue of transitional justice. The agreement may represent an important step toward ending the conflict that Colombia has endured for many decades. However, potential amnesties for FARC militants and unclear definitions of some key terms within the agreement raise fears among human rights groups and victims that not all human rights abusers will go through an unbiased process of justice.

The agreement provides for the creation of a "Special Jurisdiction for Peace," consisting of a tribunal and special courts, to determine accountability for past human rights violations. The tribunal will primarily consist of Colombian judges, who will have jurisdiction over all the parties to the conflict who are accused of 'grave crimes.' Colombia has not yet established a process of selecting judges, but it has recognized the importance of selecting neutral judges due to the highly politicized nature of the Colombian

judiciary. The agreement further provides that if a defendant acknowledges his or her responsibility for serious crimes, the sentence will be a five- to eight-year ‘restriction of liberty’ instead of a jail sentence. However, if the defendant denies responsibility and is guilty of the crime, he or she will face a prison sentence of up to twenty years. For those who confess and contribute to truth telling, the courts will give special treatment because of the importance of the rights and needs of victims in this peace agreement.

Furthermore, the agreement establishes amnesty for defendants accused of “political and associated crimes.” In support of the agreement, Jose Miguel Vivanco, the Americas director at Human Rights Watch (HRW), stated that HRW “fully supports Colombia’s efforts to obtain a peace agreement that would end years of bloodshed.” However he said that it was imperative to note that while special treatment may incentivize confessions, it could also allow those responsible for the crimes to avoid a more meaningful form of justice—imprisonment. Although this amnesty law is not available to defendants accused of “grave crimes,” the lack of a definition of “associated crimes” creates a fear of injustice among victims. Amnesty International cautions that “[t]he [agreement’s] focus on the ‘most responsible’ [perpetrators] could ensure that many human rights abusers avoid justice since the term has not been clearly defined.”

In the early 1990s, the Colombian government could grant pardons to alleged human rights abusers with no restrictions. However, unrestricted pardons ended in 2002 when Colombia ratified the Rome Statute of the International Criminal Court. As a result, the newly signed agreement must include legal prohibitions on the amnesties it grants so that victims are not impeded from obtaining access to judicial remedies and atrocities do not go unpunished. The International Criminal Court (ICC) optimistically noted that “the agreement excludes the granting of any amnesty for war crimes and crimes against humanity, and is designed, amongst others, to end impunity for the most serious crimes.” Furthermore, the agreement requires conditioning amnesty benefits

on the FARC disarming within sixty days of reaching the final agreement, and FARC must sign the final agreement no later than March 23, 2016.

The comprehensive agreement, which covers more than fifty points, is not yet available in its entirety. However, as far as international law is concerned, if the unpublished points mirror the reasoning of what is currently in the public eye, no objections are likely. Most of the alleged human rights abusers will not be going to jail, but they will also not be wandering on the streets without facing justice. The next steps toward signing and implementing the final agreement will require close monitoring.

LAND RIGHTS: PRESERVING BRAZILIAN INDIANS’ TRADITIONAL WAYS OF LIFE

It is common knowledge that Brazil is the largest, most populated country in Latin America. It is less common knowledge, however, that Brazil’s indigenous population is currently facing a number of critical issues that threaten the future of its people. Even during the first-ever World Indigenous Games—which was recently held in October 2015 to highlight indigenous cultures and values—there was little discussion about issues that impact rights, land ownership, and culture preservation for the Brazilian Indians.

The National Indian Foundation (FUNAI), an executive agency set up to ensure the protection of indigenous interests, currently handles the mapping of indigenous territories in Brazil. A proposed constitutional amendment known as PEC 215 would transfer the power of demarcating indigenous land from the executive branch (FUNAI) to the legislative branch (Congress). This transfer of power could have huge implications on the indigenous people, as many fear it will eventually allow Congress to reduce, reverse, or even deny the demarcation of land to indigenous people. Brazilian indigenous groups, human rights defenders, and environmental activists fear that Congress will cave to pressure from corporations and instead open the land for

their use which may represent a step backwards in the fight to preserve Brazilian Indians' traditional ways of life.

Article 231 of the Brazilian Constitution recognizes indigenous peoples and guarantees them permanent possession and exclusive use of their traditional lands including the “riches of the soil, [and] the rivers and the lakes existing therein,” but excluding subsoil such as mineral resources. Demarcating land as “indigenous” secures the Brazilian Indians' rights as recognized in the Brazilian Constitution of 1988. Under President Dilma Rousseff, there have been fewer demarcations granted than under any other government since 1988. This is largely because legislative proposals from congresspeople representing large agri-businesses, mining corporations, and the dam industry—all of whom intend to take the land from indigenous peoples and open it to development—have obstructed the demarcation process. To date, FUNAI has mitigated the problem somewhat because it is less hostile to indigenous interests and holds more distant relationships with the private corporations.

The land rights and cultural interests of the Brazilian Indians stand to change dramatically with the shift in power that is proposed by PEC 215. Within Brazil's Congress, there is a faction known as the *Bancada Ruralista*, a group of legislators who have transferred jurisdiction over private multinational companies to the legislative branch. Since the *Bancada Ruralista* today dominates Congress, it is highly unlikely that Congress would grant new demarcations if the PEC 215 passes. As Brazilian indigenous activist, Narube Werreria from the Karaja nation states, “[s]oon, there will be no more indigenous peoples, no more forest, no more animals.” If PEC 215 becomes law, Congress is likely to decrease the establishment of indigenous lands and protected areas, which would create major deterrent for Brazil to meet its commitments to international agreements and cause irreparable environmental destruction.

Human rights defenders and environmental activists are concerned that political considerations will lead lawmakers to ignore Brazil's obligations under international law regarding indig-

enous peoples' rights, and to base their decisions instead on economic expediency. Fiona Watson, the research director for Survival International, stated that “many Indians consider PEC 215 a move to legalize the theft and invasion of their lands by agri-businesses. It will cause further delays, wrangling, and obstacles to the recognition of their land rights.” Furthermore, Watson compared this situation to “put[ting] the fox in charge of the hen-house.”

As a Member State of the Organization of American States (OAS), Brazil is subject to the jurisdiction of the IACHR and bound by the obligations established in the OAS Charter and the American Declaration of the Rights and Duties of Man. Moreover, Brazil has ratified International Labor Organization (ILO) Convention (No. 169) Concerning Indigenous and Tribal Peoples in Independent Countries, as well as the United Nations (UN) Declaration on the Rights of Indigenous Peoples (UNDRIP). International Labor Organization Convention No. 169 links the rights of indigenous peoples to social, economic, and cultural rights, specifically as to their relationship to the land. Similarly, Article 26(1) of the UNDRIP states that “Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired.” Under Article 41 of the UNDRIP, states have an obligation to ensure indigenous peoples' participation in all of the measures that may affect them.

On October 27, 2015, a parliamentary committee for demarcation of native areas approved the proposed constitutional agreement, PEC 215. Now, it must make its way through the House of Representatives, the Senate, and President Dilma Rousseff must sign it for it to become law. Opponents may appeal the amendment to the Supreme Court, which could reject the newly created amendment if it believes that it is unconstitutional and violates the rights of indigenous peoples. If PEC 215 is not closely monitored or if the rights of Brazilian Indians are not appropriately represented, it may cause tribal cultures to disappear, and Brazil could lose an irreplaceable part of its heritage.

By Jazmin Chavez, staff writer