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### Inter-American System

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## IV INTER-AMERICAN SYSTEM

DIEGO RODRÍGUEZ-PINZÓN\*

In this report I will refer to several cases decided by the Inter-American Commission on Human Rights (hereinafter 'Inter-American Commission' or 'Commission') which have special significance in the context of the Inter-American System. First of all, I will report on the inter-State case *Nicaragua vs Costa Rica* decided by the Commission on 8 March 2007. This is the first inter-State case filed before the Inter-American Commission under the Article 45 proceedings of the American Convention on Human Rights. Eventually, the case was dismissed in the admissibility decision reported below. The case, therefore, sets a precedent within the Inter-American System regarding this type of litigation. The case also sheds light on how the regional system may deal with similar cases in the future. Furthermore, the case appears to signal a changing perception by States. Previously, States avoided filing inter-State complaints before the Commission, possibly based on archaic conceptions of sovereignty that have been prevalent in the Americas. However, this may no longer be the case. States may be shifting towards a new understanding of the role of these organs by which the resolution of certain disputes by international human rights bodies is a valid and legitimate legal alternative that positions the specific case in a juridical environment, relatively isolated from other bilateral/political aspects.

Regarding the Bahamas and Guyana cases below, this is the first time that the Commission has rendered decisions on the merits against these States. Such decisions were issued under the American Declaration of the Rights and Duties of Man, as those countries have not yet ratified the American Convention on Human Rights. Therefore, apart from their historic significance, they also illustrate the interpretation of certain provisions of the American Declaration. Additionally, these decisions also underscore some human rights problems still persisting in those States; as well as documenting the need to conform certain domestic practices and laws to reflect the State's international obligations.

The full text of the decisions are available at: [www.cidh.org/casos.eng.htm](http://www.cidh.org/casos.eng.htm).

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**Report No. 11/07-Interstate Case 01/06 *Nicaragua vs Costa Rica***

On 6 February 2006 Nicaragua brought a case against Costa Rica alleging violations of Article 1(1) (obligation to respect rights), Article 8 (right to a fair trial), Article 24 (right to equal protection and Article 25 (right to judicial protection) of the American Convention; Articles 2, 7, 8, and 28 of the Universal Declaration of Human Rights; Article II (right to equality before the law) and XVIII (right to fair trial) of the American Declaration; and Article 9 (elimination of all forms of discrimination) of the Inter-American Democratic Charter. These alleged violations are based on Costa Rica's failure to ensure protection of the human rights of the Nicaraguan migrant population within its territory.

On 10 November 2005, Mr Canda Mairena – a 26 Nicaraguan national – was attacked by two dogs at the workshop owned by Mr Zuniga Mora. The incident was witnessed by the owner of the workshop, a security guard, the head of the security company, policemen, firefighters and other bystanders. Mr Canda Mairena was taken to the hospital where he died the same day from his wounds. An autopsy showed that his death was attributable to multiple dog bites with lacerations of muscles, arteries and veins leading to hemorrhagic shock. The policemen that were at the scene, merely watched the incident and failed to shoot the dogs, despite the fact that they had more than one opportunity to do so.

On 4 December 2005, six Nicaraguan citizens were in Los Espejos bar where 25–30 other persons were present, the majority of them Costa Rican. Between 12:00–1:00 am the six men decided to leave, because they were being verbally attacking with xenophobic remarks. Some of the Costa Rican patrons followed the men as they left and began to physically assault them by throwing stones at them, and even attacked them with knives. One Nicaraguan was killed and two were seriously injured.

*Procedure*

Nicaragua repeatedly requested that the Commission should have processed its communication against Costa Rica under Article 61 of the Convention instead of Article 45; however, the Commission reasoned that the Convention must be interpreted in its entirety. Therefore, because Article 45 specifically recognises the competence of the Commission to admit and examine communications between States; and Articles 46 and 47 set out the requirements to be fulfilled by such communications, then the Commission cannot ignore these articles and focus solely on Article 61. The Commission found that it acted in full accordance with the procedures set forth in the American Convention.

Nicaragua also argued that the Commission erred in granting Costa Rica an extension of time in which to file its response when its original filing deadline had already passed. (Costa Rica's deadline to reply was 15 April 2006 and on 24 April 2006 it requested an extension of time. The Commission granted Costa Rica an eight day extension.) However, the Commission reasoned that in practice the Inter-American

system has operated with a certain degree of flexibility so long as the delay is not considered excessive within the necessary bounds of time and reasonableness. The Commission indicated that, because this was an inter-State matter it was especially important to exercise flexibility with time limits in order to preserve the relationship between the parties which would ultimately facilitate justice being done. Therefore, the Commission found that granting the extension of time to Costa Rica was justified.

Costa Rica alleged irregularities in the Commission's decision to join its examination of admissibility and merits of this case. The Commission noted that Article 37(3) allows, in exceptional circumstances, to open a case, but defer its treatment of admissibility until the debate and decision on the merits. Further, the procedural rules do not require the Secretariat to inform the parties in writing of which exceptional circumstances the Commission considered in reaching the decision to join the two stages. The Commission reasoned that exceptional circumstances did exist in the present case and therefore found that it had not committed any irregularities.

Costa Rica also protested against the decision of the Commission to convene a hearing before the time limit granted to Nicaragua to present its observations on the merits had elapsed. The Commission notes that Article 38 provides that 'if [the Commission] deems it necessary in order to advance its consideration of the case, the Commission may convene the parties for a hearing'. Therefore the Commission reasoned that there was no rule to prevent the Commission from convening a hearing when it did.

On 6 February 2006, Nicaragua declared that it recognised the inter-State competence of the Commission. On 2 July 1980, Costa Rica recognised the competence of the Commission. The Commission found, after examining the declarations of both States, that both parties did not exercise the option to establish time constraints or any other limitations on the competence of the Commission. In its reply to Nicaragua's communication, Costa Rica cited on several occasions Nicaragua's declaration accepting the competence of the Commission. However, later in the proceedings Costa Rica challenged the competence of the Commission, citing that there was no record of Nicaragua's acceptance of the Commission's authority. After verification, the Commission reiterated its finding that on 6 February 2006 the Secretariat officially received Nicaragua's formal acceptance of the Commission's inter-state jurisdiction.

However, the Commission did consider the legal consequences of the fact that Nicaragua had deposited its declaration of acceptance on 6 February 2006, but that declaration was not confirmed by the General Secretariat until 27 October 2006. The Commission reasoned that the act of deposit had sufficient legal effect, even if notification of the deposit is delayed or goes unnoticed. It reasoned that the Vienna Convention on the law of Treaties corroborates this position. The Commission also considered the *ICJ Case Concerning the Right of Passage over Indian Territory*, which held that the contractual relation between the parties and the compulsory jurisdiction of the Court were established *ipso facto* by the fact of making such a declaration.

Finally, the Commission indicated that the delay in notification did not impose any detriment to Costa Rica and therefore the delay should not negate the otherwise valid legal effect of the 6 February 2006 acceptance by Nicaragua of the Commission's jurisdiction.

Next, the Commission examined its jurisdiction. The Commission found that it was competent *ratione personae* to take up the cases connected with Natividad Canda Mairena, José Ariel Silva Urbina, and José Antonio, insofar as these alleged victims are individuals whose rights were recognised by Costa Rica and should have been ensured by the State. The Commission determined that in order for the Commission to have jurisdiction over the category of people identified as the 'Nicaraguan migrant population in a vulnerable situation in Costa Rica', there must be specific individually identified victims or refer to a specific set group of victims composed of distinguishable individuals. While it is not necessary to mention each individual by name, the State must give objective criteria by which to distinguish the collection of identifiable persons as possible victims of violations by the fact of belonging to a group or community in order that the group is not so vast as to render individual identification of the victims meaningless.

The Commission further reasoned that Article 45 refers to allegations concerning violations of a human right, which applies to generalised situations of widespread or systematic violations, which does not require individual identification of each possible victim. Therefore, the Commission concluded that it also had *ratione personae* competence to take up the alleged violation of the Nicaraguan migrant population in Costa Rica.

The Commission considered it had *ratione temporis* to examine any acts and omission that have occurred since 6 February 2006 (when both parties had formally accepted the jurisdiction of the Commission) as well as continuous violations that commenced prior to the date of declaration of recognition, but which continued after said date of recognition.

The Commission also found that the communication articulates colourable claims with respect to Articles 8 (right to fair trial), 25 (right to judicial protection), 24 (right to equal protection) of the Convention with the general obligation to respect and ensure rights contained in Article 1(1).

Having found that the necessary elements to establish its jurisdiction in the case were present, the Commission turned to the admissibility requirements. Regarding the rule of exhaustion of domestic remedies, the Commission found it could not waive its application in the case because of insufficient evidence by Nicaragua regarding the specific circumstances that the alleged victims' indigence did not allow them to exhaust domestic remedies; nor does the exception of unwarranted delay apply noting that in the individually identified cases a culprit has been identified, charges have been brought, and investigation is actively proceeding.

As far as the allegation of a generalised systematic practice of discrimination, the Commission indicated that an exception to the rule of exhaustion was applicable, because it is reasonable to presume that no adequate or effective remedies exist to remedy a generalised situation. However, the Commission added that in order to invoke this exception it would be necessary for Nicaragua to demonstrate the *prima facie* existence of the alleged practice. Therefore, the Commission went on to analyse whether or not Nicaragua had made an adequate *prima facie* case that a generalised practice of systematic discrimination existed within Costa Rica against Nicaraguan migrants.

The Commission considered that it lacked sufficient evidence with which to determine conclusively that the circumstances surrounding the death of Canda Mariena or the treatment of this incident by the Costa Rica judicial authorities was an example of the practice of discrimination alleged to exist in Costa Rica. Nicaragua argued that Mr Canad Mariena's attack was illustrative of a pattern of discrimination and presented multiple other stories to corroborate this claim. However, Nicaragua did not plead these incidents in sufficient detail for the Commission to find that these other incidents were illustrative of a systematic discrimination against Nicaraguan migrants by the police or to otherwise establish the international responsibility of the State of Costa Rica. Instead, the Commission found that Nicaragua had demonstrated that there was a prevailing feeling of intolerance and rejection towards Nicaraguans among certain sectors of Costa Rica; and concluded that there was a perception of vulnerability among Nicaraguans who feel discriminated against in Costa Rica. However, it indicated that the perceptions of the population do not constitute a practice that could be said to be grounds for establishing an international responsibility of the State.

Therefore, the Commission found that Nicaragua did not establish a *prima facie* case that systematic discrimination existed. Having found no *prima facie* case, the Commission did not find that an exception to the exhaustion requirement was applicable and therefore the case was rendered inadmissible.

#### **Case 12.264 – Franz Britton (Guyana)**

On 21 March 2000, petitioner, I. Kamu Cush, Chairman for Economic Empowerment, presented a claim against the State of Guyana on behalf of Mr Franz Britton. Mr Britton, a Guyanese national, was arrested by State police officers. He was released four days later, but told to report back to the police station in two days. Mr Britton reported to the same police station and was re-arrested by a police division known as the Quick Reaction Group or the 'Black Clothes', which is known to be a death squad. He was last seen being forced by police officers into a silver car. Mr Britton has not been seen since, and his whereabouts remain unknown despite multiple requests by his family to the State to locate him. Petitioner alleges violations of Article II (right to equality under the law), XI (the right to preservation of health and well-being), XVIII

(right to fair trial), XXV (right to protection from arbitrary arrest), and XXVI (right to due process) under the American Declaration.

On 10 October 2001, the Inter-American Commission (Commission) declared petitioner's petition was admissible with respect to Article II, XI, XVIII, XXV and XXVI. On 26 December 2002 the Commission requested the State to submit observations on the merits within two months. However, to date the Commission has not received any response from the State.

The Commission presumed the facts alleged in the petition to be true, especially due to the fact that the State had remained silent on the merits; and therefore found that the evidence could lead to no other conclusion than that Mr Britton was forcibly disappeared by the State. The Commission found that the facts of Mr Britton's disappearance constituted forced disappearance under human rights law. The facts meet the definition of forced disappearance under Article II of the Forced Disappearance Convention. While Guyana is not a State Party to the Convention on Forced Disappearance, it is bound by the American Declaration which recognises several of the same rights that are affected with the forced disappearance of persons.

The Commission found that the State was in violation of Article I (right to life, liberty, personal liberty), XVIII (right to a fair trial), XXV (right to protection from arbitrary arrest), and XXVI (right to due process). The Commission did not find that the State violated Article II (right to equality under the law) and Article XI (right to health and well-being).

The Commission reasoned that forced disappearance of persons frequently involves the execution of those detained, in secret and without any kind of trial, followed by a hiding of the body with a view to removing all material traces of the crime and achieving impunity for those who committed it. For all of these reasons, the Commission indicated that forced disappearances violate the right to life. The Commission also considered that forced disappearances violated the right to personal security and right to liberty.

The Commission indicated that, because the State never charged Mr Britton with a crime or brought him before a court, and because the State was responsible for Mr Britton's detention, disappearance and death; and finally because the State had failed to investigate Mr Britton's disappearance despite multiple requests by his family, that the State had violated Mr Britton's right to a fair trial.

The Commission considered that because Mr Britton was deprived of his liberty without access to procedures established by law, the State violated his right to be free from arbitrary arrest. The Commission also found that Mr Britton was denied his right to an impartial trial that and therefore, the State has violated his right to be presumed innocent until proven guilty.

The Commission did not find the State responsible of violating Article II or Article XI, because the petitioner did not advance any evidence to support those violations.

### *Recommendations*

The State should: carry out an impartial and effective investigation to establish the whereabouts of Mr Britton and to identify those responsible for his detention-disappearance, and that those found responsible should be punished; adopt the necessary legislative measures to prevent the recurrence of such events, and make sure that due process and effective means of establishing the whereabouts of prisoners in State custody be implemented; adopt measures to make full reparation for the proven violations, including locating the remains of Mr Britton and informing the family and facilitating the wishes of his family as to an appropriate final resting place; provide reparation for the relatives of Mr Britton including moral and material damages in compensation for the suffering that resulted from his disappearance.

### **Report No. 81/07 – Case 12.504, Daniel and Kornel Vaux (Guyana) (Merits)**

On 8 December 2000, petitioner, Avril Solomon, the alleged victim's sister, presented a claim against the State of Guyana on behalf of her brothers. She claims that her brothers, Daniel and Kornel Vaux (Vaux brothers), were convicted and sentenced to death for the murder of Baiwant Jaikissoo, and that their right to due process was violated, because the police coerced oral and written confessions out of them by beating them repetitively while in custody; and that the Guyanan judiciary refused to exclude these statements in the capital case against the Vaux brothers. The State is therefore alleged to have violated Article XXV (right to humane treatment while in custody), XXVI (right to due process), and XVII (right to fair trial) of the American Convention.

The Commission received the petition in December 2000, and informed the State on 5 September 2005 that it had opened a case against it. As of 19 September 2005, the Commission had received only one communication from the State which informed the Commission that the Vaux brothers had applied for commutation, but no decision had yet been reached.

The Commission requested that the State take precautionary measures to stay the execution of the Vaux brothers until the Commission had an opportunity to examine the case; again it did not receive a response from the State.

### *Facts*

The victim, Baiwant Jaikissoo, was found strangled to death on 9 July 1993 along a highway in Guyana. The deceased had last been seen in the company of the Vaux brothers. They were arrested later in the evening of 9 July 1993. They were held for approximately two days (until 11 July 2003) when they were interrogated by the police. During these interrogations the police physically beat both men, causing them to make oral and written statements. Daniel Vaux claims he was beaten on two occasions, and alleges he was hit in his face and gun-butted in his torso resulting in bruising and swelling. Kornel Vaux alleges he was beaten and gun butted by police officer the day

after his arrest and again two days later. He claims a police officer put his foot on the chain between his handcuffs, while he was still restrained for at least eight minutes. He also claimed that he was gun butted in his chest and abdomen.

At trial both men contended that these confessions had been involuntarily given to the police as a consequence of severe beatings; they also presented testimony of a senior police officer and a former magistrate who testified to seeing signs of abuse on the men's bodies. Daniel Vaux also submitted medical evidence to substantiate his injuries, however, his brother could not submit such evidence, because it had been 'lost'. Finally they presented an alibi defence. The trial court judge found both men's oral and written statements to be voluntary and the Vaux brothers were ultimately convicted of murder and sentenced to death.

The Appellate Court ruled that Daniel Vaux's written statement was involuntarily given because of the beatings, but that the oral confession was a spontaneous response and therefore admissible. Therefore, it upheld Daniel Vaux's conviction. As to Kornel Vaux, the Appellate Court found that both statements were properly admitted, and upheld his conviction as well.

The Commission decided to join its analysis of admissibility with the merits phase. In regard to admissibility, the Commission found the petition admissible on the basis that the Vaux brothers had exhausted domestic remedies and because according to the petition the case was not duplicated elsewhere. The Commission found it had *competence ratione personae* to deal with the claims presented, because the complaint argued human rights violations, which specifically violate the American Declaration.

### *Merits*

Because the State did not provide the Commission with any information, the Commission presumed the facts as reported in the petition to be true. The Commission utilised a heightened level of scrutiny, due to the fact that the allegations stemmed from a capital punishment case. This level of scrutiny had been articulated and applied by the Commission in previous capital cases before it.

Relying on the *Tibi* Case the Commission found that the evidence of injury inflicted on Daniel Vaux while in custody demonstrated that the State had failed to satisfy the standard of human treatment prescribed under Articles XXV (right to humane treatment while in custody) and XXVI (protection from cruel infamous or unusual punishment). The Commission noted that in regard to Kornel Vaux, despite the fact that medical evidence was unavailable at trial, due to his parallel account of what occurred to his brother, the Commission found that the State had violated Articles XXV and XXVI in regard to Kornel Vaux as well.

The Commission considered relevant that the written statement made by Daniel Vaux was found by the Appellate Court to be inadmissible, but upheld his conviction despite this finding. The Commission reasoned that the State violated Daniel's due

process rights, because it did not afford him an effective legal remedy, despite the fact that the court made a finding of inadmissibility. The Commission also considered that both of the confessions were indivisible components, and that it was difficult to accept that the Court could find the written statement to be coerced and that the oral statement was voluntary.

The Commission indicated it was worried by the evidence presented by the former magistrate before whom both men appeared, and who testified he could see signs of abuse on the men's bodies. The Commission was also troubled by the unexplained disappearance and unavailability of medical evidence Kornel Vaux intended to present. Here the Commission reasoned that there appeared to be a conspicuous 'inequality of arms' reflected in the fact that critical medical evidence was unavailable and therefore the Court had to rely on testimony of state agents who were interested parties. Therefore, the Commission reasoned that Kornel Vaux was deprived of the opportunity to fully contest the voluntariness of his statements.

Finally, the Commission considered the fact that both men were held for a week before they were seen by a magistrate. For all these reasons the Commission found that the State's conduct had an impact upon the fairness of the trial of the Vaux brothers and violated Articles XVIII and XXVI of the American Declaration.

#### *Recommendations*

The State should: grant the effective remedy of a re-trial in accordance with fair trial protections, or make an appropriate remission or commutation of sentences as well as including compensation for maltreatment to the Vaux brothers; adopt legislative or other measures to ensure that criminal defendants are afforded access to evidence under the control of the State that they might reasonably require to challenge the voluntariness of confession evidence; undertake an investigation to identify the direct perpetrators of the beatings inflicted on the Vaux brothers; adopt legislative or other measures necessary to ensure that any confession of guilt by an accused is valid and free from coercion of any kind.

#### **Report No. 78/07 – Case 12.265, Chad Roger Goodman (The Bahamas) (Merits)**

On 7 August 1998, Burton Copeland, solicitors from the UK, brought a claim on behalf of Chad Roger Goodman alleging that the Bahamas violated Articles I (right to life), II (right to equity before the law), XXV (right to be tried without undue delay and to receive humane treatment while in custody), XVIII (right to a fair hearing) and XXVI (right to an impartial hearing) of the American Declaration. They alleged that Mr Goodman, a Bahamian national, was charged with murder on 6 May 1993; that his first trial was suspended due to television and radio broadcasts which prejudiced the jury against Goodman; that his second trial commenced on 4 November 1996 and that he was convicted on 20 November 1996 of murder, kidnapping and armed robbery. Subsequently, he was handed a mandatory death sentence for the murder

and 10 and 15 year sentences for kidnapping and armed robbery (respectively) to be served concurrently.

The Commission found the petition had been timely filed, it did not duplicate other international proceedings, the facts alleged tended to establish the allegations could be well founded and therefore presented a colourable claim, and that domestic remedies have been exhausted. Therefore the Commission found the petition admissible.

### *Merits*

The Commission utilised a heightened standard of review when reviewing capital cases, noting that it has an enhanced obligation to ensure that any deprivation of life imposed by an OAS member State must comply strictly with the requirement of the applicable Inter-American human rights instruments. The Commission also noted that the severity and irrevocable nature of the death penalty also required a heightened review standard.

The Commission relied on the *Michael Edwards, Omar Hall, Jeronimo Bowleg and Brian Schroeter* Cases where the Commission had previously found that practice of mandatory death sentencing illustrated that Bahamian law did not have a procedure for individual sentencing nor did it allow those convicted to present mitigating evidence prior to being sentenced, in violation of Articles I, XVIII, XXV and XXVI of the American Declaration. The Commission reasoned that mandatory death sentences precluded consideration by a court of whether or not the death penalty was an appropriate or permissible form of punishment. Furthermore, it rendered appellate court review virtually meaningless. Finally, mandatory sentencing does not take into account that the crime of murder may be committed in varying degrees of gravity, and therefore results in the arbitrary deprivation of life. Therefore, the Commission found that the State had violated Articles, I, XXIV, and XXVI of the American Declaration.

The Commission next considered the procedure and process for requesting a pardon or amnesty under Bahamian law. Again it relied on *Edwards et al.* where the Commission previously found the Advisory Committee on the Prerogative of Mercy to be inconsistent with Articles I, XVIII, XXIV and XXVI of the American Declaration. The Commission went on to reason that there existed no procedure or mechanism to specify the manner in which prisoners may file an application for amnesty, pardon or commutation of sentencing; and that the approval of such an application remained entirely at the discretion of the State. There is also no process or procedure for informing a prisoner whether or not their application has been granted. Therefore, the Commission reasoned there is no effective procedure for a condemned person to petition for amnesty, pardon or commutation. In the absence of minimal protection and procedures, Article XXIV is rendered meaningless. For these reasons, the Commission found that the State had violated Article XXIV of the American Declaration.

The Commission also considered the right to trial without undue delay. In this respect, the Commission indicated that undue delay must be evaluated on a case by case basis taking into account the complexity of the case, the procedural activities surrounding the case, and the conduct of the judicial authorities. Further, the burden of proof rests with the State to present evidence justifying any prolonged delay. In the instant case the Commission noted there was a pre-trial delay of three years. The Commission considered that Mr Goodman's defence did not appear to have been complex, nor did the prosecution's case. Because the State had not provided any information contradicting this, the Commission found that the State had failed to try Mr Goodman without undue delay and within a reasonable time. Therefore, the State had violated Article XXV of the American Declaration.

In evaluating the claim that the State had violated Mr Goodman's right to an impartial hearing due to exposure of the jury to radio and television broadcasts that prejudiced the jury, the Commission considered that these matters were more appropriately left to the domestic courts of the State, specifically the appellate courts to review the manner in which a trial was conducted.

The Commission reasoned that the conditions of detention, namely the conditions of accommodation and hygienic and sanitary restrictions, fell short of international standards for the treatment of prisoners; and that the nature of these shortcomings were exacerbated by the length of time Mr Goodman had spent in detention (*i.e.* undue delay). Therefore, the Commission found that the State was in violation of Articles XI, XXV and XXVI of the American Declaration. The Commission also found that these conditions of confinement amounted to cruel infamous or unusual punishment and therefore violated Article XXVI of the Declaration.

#### *Recommendations*

The State should: grant Mr Goodman effective remedy for the violations of Articles I, XVIII, XXIV, XXV and XXVI including commutation of his sentence; adopt legislative or other measures necessary to ensure the death penalty is imposed in compliance with the rights and freedoms guaranteed under the Declaration, and that the mandatory sentencing law be abolished; adopt legislative or other measures to ensure that people are tried without undue delay in the Bahamas; adopt legislative or other measures to ensure the right to humane treatment and the right to be free from cruel, inhumane or infamous punishment exist in the Bahamas.