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### Inter-American System

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### III INTER-AMERICAN SYSTEM

DIEGO RODRÍGUEZ-PINZÓN\*

In this report, I will refer to recent developments in the structure and regulations of the Inter-American Commission on Human Rights (hereinafter 'Commission' or 'Inter-American Commission') of the Organization of American States (OAS), as well as summarising several cases decided in 2009.

In 2010, three new commissioners will join the Inter-American Commission. The new members are Rodrigo Escobar Gil (Colombia), José de Jesús Orozco Henríquez (Mexico) and Dinah Shelton (USA). They will replace outgoing commissioners Victor Abramovich (Argentina), Paolo Carozza (USA), and Sir Claire K. Roberts (Antigua and Barbuda). Additionally, commissioner Florentín Meléndez resigned as a member of the Commission due to his recent designation as a Supreme Court justice in El Salvador. Maria Silvia Guillén, who was elected on 3 December 2009 by the Permanent Council of the OAS, will take his position effective as of 1 January 2010.

On 9 December 2009, the Commission published its new Rules of Procedure, based on reforms approved during the 137<sup>th</sup> Period of Sessions that took place in fall 2009. The new Rules of Procedure entered into force on 31 December 2009. The new Rules better articulate the role of the Inter-American Commission in contentious proceedings before the Inter-American Court of Human Rights.

Four cases are reported below. The first two cases illustrate some of the pervasive human rights violations still existing in Brazil. These endemic violations involve issues such as official violence, racial profiling, and violence by illegal armed groups, among other unlawful practices. The third case refers to the rights of HIV/AIDS patients under the American Convention. This is the first time that the Commission has dealt with issues related to the rights of HIV positive persons. The last case deals with pension rights under several provisions of the American Convention by exploring the scope of the rights to property (Article 21) and economic, social, and cultural rights (Article 26).

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

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***Sebastiao Camargo Filho vs Brazil, Case 12.310, Report No. 25/09, 19 March 2009***

On 7 February 1998, a group of 30 armed individuals arrived at the Santo Angelo and Boa Sorte estates in the state of Parana, Brazil and carried out violent extrajudicial evictions of the landless rural workers who had been settled there by the state government. During the raid, Sebastiao Camargo Filho was shot and killed by one of the vigilantes. Although a police investigation was launched on the same day, more than ten years have elapsed and 'the State has yet to conduct a thorough investigation to identify, prosecute and try the perpetrators of that crime.'

On 30 June 2000, the Movement of Landless Rural Workers, the Pastoral Land Commission, the Autonomous National Network of People's Lawyers, the Global Justice Center and the International Human Rights Law Group filed a complaint with the Inter-American Commission on Human Rights against the State of Brazil for violations of the right to life (Article 4), to humane treatment (Article 5), to a fair trial (Article 8), and to judicial protection (Article 25), in conjunction with a violation of the obligation of respecting those rights (Article 1(1)), that arose from the murder of Sebastião Camargo, and the State's subsequent failure 'to duly investigate the case and bring the perpetrators to justice.'

The Commission found Brazil in violation of the above provisions and reiterated that, in accordance with Inter-American jurisprudence,

it is not necessary to determine the perpetrators' culpability or intentionality, nor is it essential to identify individually the agents to whom the acts of violation are attributed. (...) [but that] it must be shown that state authorities supported or tolerated infringement of the rights recognized in the Convention, or that the state did not take the necessary steps under its domestic law to identify and, where appropriate, punish the authors of those violations.<sup>1</sup>

The Commission found evidence that the local authorities knew of the imminent attack on the workers, the state officials conspired with those responsible for the attacks, and the authorities failed to conduct a proper investigation, which perpetuates a system of impunity for rural violence.

The Commission recommended that the State of Brazil conduct a thorough investigation of the incident in order to identify and punish the perpetrators of Sebastião Camargo Filho's murder; make full amends to Sebastião Camargo Filho's family; adopt a global policy for eradicating rural violence; adopt effective measures to dismantle illegal armed groups involved in conflicts related to land distribution; and adopt a public policy to tackle the impunity surrounding individual human rights violations.

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<sup>1</sup> Inter-American Court of Human Rights, *The 'Panel Blanca' Case (Paniagua Morales et al.)*, Judgment of 8 March 1998. Series C, No. 37, para. 91.

On 19 March 2009, the Commission released Report No. 25/09 which found that although Brazil 'had taken a series of measures to combat rural violence', the State failed to implement all of its recommendations and therefore decided to publish this case in its Annual Report and 'will continue to monitor the measures taken by the State of Brazil until the recommendations have been fully complied with.'

***Wallace de Almeida vs Brazil, Case 12.440, Report No. 26/09, 20 March 2009***

On 13 September 1998, members of the 19<sup>th</sup> Military Police Battalion of Rio de Janeiro murdered a young, 18-year-old black soldier, Wallace de Almeida, during a police operation in the Morro de Babilonia *favela*. Mr de Almeida was walking towards his home when shots were fired by the police to simulate a confrontation between the police and the inhabitants, one of which struck Mr de Almeida in the thigh. Mr de Almeida bled on the ground for about an hour while the police stood around him. He was then dragged, thrown into a police vehicle, and taken to a hospital, where he died a few hours later due to loss of blood. A police investigation was opened on 14 September 1998, but still remains incomplete. No charges were filed by the Public Prosecutor's Office against anyone, leading to complete impunity for the crime.

On 26 December 2001, the Inter-American Commission on Human Rights received a petition filed by Ivanilde Telacio dos Santos, Rafaela Telacio dos Santos, Rosana Tibuci Jacob, Fagner Gomes dos Santos, the Center for Black Studies, and the Center for Global Justice (CJG), alleging violations by the State of Brazil of Articles 4, 5, 8, 25 and 1(1) of the American Convention on Human Rights, leading to the death of Wallace de Almeida.

The Commission found that the death of Mr de Almeida occurred 'against a backdrop of police violence', where police commonly carry out extrajudicial executions and use force disproportionate to their operations. The Commission also sees a strong racial factor in this case, with racial profiling leading to Afro-Brazilians more likely to be arrested, harassed, prosecuted, convicted and subjected to police violence than the rest of the population. Additionally, because the police investigate their own forces, no autonomy is given to forensic experts and little witness protection is given, a strong culture of impunity exists for police violence.

The Commission determined that the State of Brazil carry out a thorough, impartial and effective investigation of the facts by independent judicial bodies of the civilian/military police, in order to establish and punish those responsible for the murder of Wallace de Almeida; the relatives of Wallace de Almeida should be fully compensated; Article 10 of the Brazilian Code of Criminal Procedure should be effectively implemented in order to complete police investigations; and measures to educate court and police officials regarding racial discrimination should be implemented.

On 20 March 2009, the Commission noted that the State of Brazil had 'taken some steps toward complying with the recommendations' but that 'the measures adopted

so far do not amount to a thorough, impartial, and effective investigation (...) nor do they indicate effective steps to prevent a repetition of the acts described in the complaint.' The Commission therefore decided to reiterate its recommendations and to publish this report in its Annual Report while continuing to monitor the status of the recommendations by the State of Brazil.

***Jorge Odir Miranda Cortez et al. vs El Salvador, Case 12.249, Report No. 27/09, 20 March 2009***

On 24 January 2000, the petitioner, Carlos Rafael Urquilla Bonilla, filed a petition with the Inter-American Commission of Human Rights alleging the international responsibility of the Republic of El Salvador for violating the rights of Jorge Odir Miranda Cortez and 26 other persons with HIV/AIDS. The petitioners allege violations of the right to life (Article 4); humane treatment (Article 5); equal protection of the law (Article 24); judicial protection (Article 25); and economic, social, and cultural rights (Article 26), in accordance with the general obligation set forth in Article 1(1) and the duty set forth in Article 2 of the American Convention on Human Rights.

The Commission reasoned that El Salvador violated Articles 1(1) and 25 by failing to ensure the 27 named persons a simple, prompt and effective judicial recourse. Mr Cortez filed an *amparo* (injunctive remedy seeking immediate judicial protection of the right) petition with the Constitutional Chamber of the Supreme Court of Justice of El Salvador requesting that the State provide triple therapy medication for himself and all persons carrying the HIV/AIDS virus in El Salvador. The delay in the Court's decision of one year, eleven months and six days was unreasonable in light of the crucial need for those with HIV/AIDS to receive immediate treatment. In addition, the Constitutional Court only extended the judgement to Mr Cortez and failed to extend the right to treatment to any other person with HIV/AIDS. The *amparo* was not effective according to the American Convention due to the excessive delay of the Court to decide it and to the fact that it only covered Mr Cortez and none of the other 26 persons, the State also violated the duty in Article 2 to bring its domestic laws in line with the treaty obligations.

The Commission also found that El Salvador violated Article 24 and reiterated that 'the principle of nondiscrimination is part of the very essence of the Inter-American system of human rights'. While the State may adopt measures to prevent the spread of the HIV/AIDS virus, it may not use 'utterly unreasonable and demeaning' means to do so that lead to unnecessary stigmatisation.

The Commission then found that El Salvador did not violate the economic, social and cultural rights of the petitioners. The State demonstrated that it took reasonable steps to provide medical care to the 27 persons listed in the record and that 'the Salvadoran health services progressively broadened free coverage to other persons infected with HIV/AIDS.' Since the Commission did not find a violation of Article 26,

it decided not to issue an opinion on the arguments regarding Articles 4 and 5, which were subsidiary claims.

After the Commission's decision on the merits, the parties reached a friendly settlement whereby El Salvador agreed to implement the recommendations of the Commission. The petitioners received reparations for the violations committed by the State and the State also completely revised its public policy regarding HIV/AIDS prevention and care. El Salvador also approved a new Constitutional Procedures Law that brings the *amparo* procedure in line with its obligations under the American Convention. Since the draft must still be approved, the Commission decided to publish this report in its Annual Report while continuing to monitor the status of the recommendation by the State of El Salvador.

***National Association of Ex-Employees of the Peruvian Social Security Institute et al. vs Peru, Case 12.670, Report No. 38/09, 27 March 2009***

Between August and December 2005, the Commission received six petitions alleging violations by the State of Peru of Articles 2 (Duty to adopt domestic legal provisions), 4 (Right to life), 10 (Right to compensation), 17 (Rights of the family), 21 (Right to property), 24 (Right to equal protection), 25 (Right to judicial protection), and 26 (Progressive development) of the American Convention on Human Rights, in connection with Article 1(1). The petitions were joined and disputed the constitutional and legislative reform introduced in 2004 in order to permanently terminate the pension regime under Decree-Law 20530 of 1974.

The Commission found that the petitioners did not put forth sufficient evidence to show a *prima facie* violation of Articles 4, 10, 17, and 24 of the American Convention, so no analysis was needed. In its analysis of Article 21, the Commission used a three-part test to determine: i) If the restriction was imposed through a law; ii) If the restriction responded to a legitimate aim to raise a social interest or to preserve the general well-being in a democratic society; and iii) If the restriction was proportional in the sense of being reasonable to obtain this aim and, in any case, of not sacrificing the essence of the right to a pension.

The Commission found that the constitutional reform met with the State's procedural requirements and was therefore lawful. It also found that 'maintaining the financial stability of the state as well as ensuring that the whole social security system is founded on principles of equity amount to legitimate aims' and that 'the restriction imposed to the right to the pension of the alleged victims, was proportional because it constituted a suitable mechanism to achieve the proposed aim, it did not affect the essential content of the right nor did it ignore the contributions made by the pensioners.' Further, the Commission clarified that 'although the right to a pension was restricted by the constitutional reform, that restriction did not amount to a deprivation of the right to property for the purposes of Article 21(2).'

The Commission then stated that ‘the right to social security constitutes one of the economic and social standards mentioned in Article 26’ and that ‘total effectiveness of such rights must be achieved progressively and in attention to the available resources.’ The Commission clarified, however, that ‘restriction in the exercise of a right, is not necessary a regressive measure.’ In this case, the Commission found that the reform did not constitute a regressive measure of the development of the right to social security under Article 26.

Finally, the Commission found that although the petitioners had filed an action for unconstitutionality with the Constitutional Court, which subsequently found the reform constitutional, there were no violations of fair trial guarantees or lack of access to an effective remedy. The Commission stated that a judicial outcome that is unfavorable does not constitute a violation of the right to an effective remedy and thus there was no violation of Article 25 by the State of Peru.

Commissioner Paolo Carozza wrote a concurring opinion, analysing Articles 21 and 26 differently. He stated,

because equalization is not a required component of property rights under international law, the Peruvian State was entirely free, within its discretion, to discontinue that right through the appropriate processes of its domestic constitutional system (...) Therefore, with the constitutional reform and subsequent statutory reform, equalization ceased to be a property right recognised by domestic law or protected by the Convention.

He found any further analysis of Article 21 unnecessary.

Finally, Commissioner Carozza suggested that under Article 26, ‘a clearer and more appropriate test as to whether a measure ought to be considered “regressive” would seek to determine merely that the measure in question has a rational relationship to the State’s efforts to develop progressively the collective economic and social conditions of the country.’ His standard would ask ‘whether the State was pursuing a legitimate aim reasonably related to the country’s economic and social progress, and whether the means chosen were, in good faith, reasonably directed toward that aim.’