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Special Coverage of the 141st Period of Sessions of the Inter-American Commission on Human Rights

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SPECIAL COVERAGE OF THE 141ST PERIOD OF SESSIONS OF THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

IMPUNITY FOR HUMAN RIGHTS VIOLATIONS DURING THE DUVALIER DICTATORSHIP IN HAITI

“The memory of the victims means that truth can be reconstructed,” said Commissioner Luz Patricia Mejía Guerrero at the March 28, 2011 Inter-American Commission on Human Rights hearing on impunity for human rights violations during the dictatorship of Jean-Claude Duvalier in Haiti. The Commissioner commended the Petitioners for keeping the memory of Haitian victims of the Duvalier regime alive. Commission President Dinah Shelton presided over the meeting and Jesús Orozco Henríquez was also present.

Petitioners Michèle Montas, a representative of victims who filed complaints against Duvalier, and Alix Fils Aimé, a supporter of Haitian organizations defending the freedom of the complainants, discussed Duvalier’s continued impunity for the human rights violations alleged to have occurred during his regime. Representatives from the State of Haiti were also present.

Duvalier replaced his father, François Duvalier as the President of Haiti in 1971, maintaining power until overthrown by a popular uprising in 1986. Duvalier’s regime was notorious for violating the human rights of Haitian citizens. The Petitioners described some of these alleged violations, including torture, human trafficking, and murder. On January 16, 2011, after nearly 25 years of exile in France, Duvalier returned to Haiti. The Haitian government arrested Duvalier on January 18, 2011, and charged him with a number of offenses, including crimes against humanity.

During the hearing, Petitioners and Respondents agreed that Duvalier should be brought to justice for the egregious human rights violations he is alleged to have committed. The Petitioners noted that a corrupt judiciary following the fall of the Duvalier dictatorship led to impunity for Duvalier. The Petitioners requested the attention of the Commission to find a means of giving technical support to Haiti as well as making an on-site visit in the hopes of sending a clear signal, “that this

effort must be continued and that this time impunity must not succeed.”

Respondents agreed with the Petitioners regarding Duvalier’s crimes, acknowledging that he should be brought to justice because “conviction of Duvalier [sends] a message to humanity and to all dictators . . . [that] if you use your power to kill and torture and dehumanize people the law will not disregard this — there will be punishment.” Nevertheless, the State noted that the Haitian judiciary lacks the resources to effectively convict Duvalier for his crimes because it lacks basic forensic tools necessary for fingerprinting or for thorough autopsy. The State also recognized that the prevalence of corruption and the inaccessibility of the courts to citizens makes the promotion of justice within Haiti difficult.

Commission President Shelton noted that the Commission has plans to visit Haiti in the summer, and reiterated that the Commission is “willing to do anything to assist with this situation.” She also asked both parties whether they considered bringing charges against members of the Duvalier regime — a question that Commissioner Orozco echoed. Both parties answered affirmatively, although Haiti’s representatives noted that the shortcomings of Haiti’s judiciary create a serious obstacle for domestic prosecution.

Kaitlin Brush, a J.D. candidate at the American University Washington College of Law, covered this hearing from the Human Rights Brief.

SITUATION OF HUMAN RIGHTS DEFENDERS IN THE AMERICAS

On March 29, 2011, the Inter-American Commission on Human Rights (IACHR) held a thematic hearing regarding the situation of human rights defenders in the Americas. Commissioner Orozco, responsible for the Human Rights defenders Unit, was joined by Commissioner Felipe González Morales, Commissioner Luz Patricia Mejía Guerrero and IACHR Executive Secretary Santiago A. Canton.

The petitioners started the presentation asking all assistants for a minute of silence in memory of hundreds of human

rights defenders who have died while fighting for the protection of human rights. Viviana Krsticevic, Executive Director of the Center for Justice and International Law (CEJIL), then mentioned the concerns of human rights organizations on account of the continual threats and murders of human rights defenders in the Americas. She noted that 50 human rights defenders were killed during the past year. Ms. Krsticevic announced that the petitioners’ presentation would focus on recommendations from civil society intended to “unlock” the situation of threats, harassment, and murder of human rights defenders.

The representative from the NGO Fray Bartolomé de las Casas asserted that the perpetrators of threats against human rights defenders are not only state actors, but also private agents such as mining companies or organized crime. From Amnesty International, Tamryn Nelson argued that states have used indirect intimidation through administrative, judicial and criminal laws. Tactics include imposing excessive difficulty on the registration of NGOs, restriction of the work of foreign nationals in certain states, or arbitrary expulsion of foreign nationals who participate or make statements in the defense of human rights.

The representative of Corporación Colectivo de Abogados José Restrepo Alvear (CCAJAR) mentioned that some of the common threats involve intelligence activities of the state and invasion of private residences and offices of human rights defenders. In order to overcome these threats, the petitioners presented some recommendations for legislative and executive actions, and also provided suggestions to the IACHR.

For executive branches of governments, the civil society representatives made numerous recommendations, including: the development of a “dignity policy” that included beneficial public policies for human rights defenders, the prohibition of campaigns against defenders through delegitimizing statements from state actors, the development of a “National Mechanism of Human Rights Defenders” in all states, the application of a differentiated approach

in the protection of defenders taking into account their particular situation (such as women, union-supporters, or environmentalists), and the creation of an urgent application mechanism for protective measures.

The petitioners noted that it is necessary for legislative powers to enact proper legislation that is able to guarantee a supportive budget for implementing the human rights protective mechanisms. In the case of the judicial branch, the civil society representatives present considered it indispensable to avoid manipulation of criminal sanctions against defenders, to create investigation protocols in cases of aggression directed at human rights defenders, to start *ex officio* investigations in the aforementioned cases, and to act rapidly and effectively.

Petitioners' recommendations for the Inter-American System included the creation of a special rapporteurship for the protection of human rights defenders, the creation of mechanisms to achieve efficacy of precautionary measures, and the establishment of protocols to monitor and supervise fulfillment of such measures. Commissioner Orozco announced that there is already a proposal for the creation of a Special Rapporteurship for the protection of human rights defenders and requested the petitioners' input to improve protection mechanisms.

Commissioner González stated that participation of human rights defenders is extremely important for the advance of the Inter-American System, and requested petitioners' opinions regarding how to get OAS political organs involved in concerns about protection mechanisms. He also asked about the existence of common standards in application of mechanisms of protection (precautionary measures) at the national level in order to provide a guide on common patterns applicable to different states in the region.

Commissioner Mejía mentioned the importance of being careful about the application of protection measures in order to avoid trivialization of those mechanisms, and also requested feedback from the petitioners on their perception of the flow of information between the IACHR and human rights defenders.

Finally, Executive Secretary Canton requested information about the experience of human rights defenders regarding what they consider as best practices from states.

In their answer, petitioners highlighted the main role of the IACHR in sending a political message to states in defense of every person working for human rights.

Alma Liliana Mata Noguez, an intern with the Center for Justice and International Law and a guest writer for the Human Rights Brief covered this hearing.

HEARING ON PRECAUTIONARY MEASURES 340/10 CONCERNING WOMEN AND GIRLS IN CAMPS FOR FORCIBLY DISPLACED PERSONS IN HAITI

March 25, 2011, marked the beginning of the Inter-American Commission on Human Rights hearings in Washington, DC with Dinah Shelton as Chair. Sitting alongside Ms. Shelton was Rodrigo Escobar Gil, Second Vice Chair, and Commissioner Luz Patricia Mejía. At issue in this hearing were the steps the Haitian government have taken to comply with a December 22, 2010 decision issued by the Commission, granting the petitioner's request for precautionary measures. Present at the hearing for the petitioners were Lisa Davis, Esq., Human Rights Advocacy Director at MADRE, Ms. Malya Villard-Apollon, Co-founder and Director of KOFIV, Eramithe Delva, Executive Director of KOFIV, and Katherine Romero of Women's Link Worldwide. The government of Haiti was represented by Natacha Clergé, director of services in the women's rights division of the Haitian Women's Ministry and André Antoine, Justice and Public Security Minister along with two other representatives.

The December 2010 precautionary measures granted by the Commission, entitled 340/10-Women and Girls in Camps for Forcibly Displaced Persons in Haiti, include the installation of lighting in the IDP camps, the provision of security, and the inclusion of grassroots women's voices in policy-making meetings. This ruling was monumental because for the first time, the Commission held that Haiti had a duty to protect the rights of women and girls from sexual violence by private third parties. The ruling was also important because, while the petitioners named thirteen individuals as victims of sexual violence in the camps, they included many more unnamed women and girls who were being raped with impunity.

Lisa Davis started off the hearing by saying that there has been minimal com-

pliance by the Haitian government since the precautionary measures were issued and, as a result, impunity reigns. She mentioned that people living in tent cities in the twenty-two IDP camps in Port-au-Prince have no access to food, potable water, or education. Rape victims, in particular, do not have access to quality emergency care within 72 hours of the rape, which if provided would reduce the risk of HIV transmission and pregnancy.

Ms. Malya Villard-Apollon mentioned that there were no specialized medical units created for young victims of rape and that the UN Gender-Based Violence Sub-Cluster (GBV Sub-Cluster) continues to discriminate against KOFIV by not including them on the rape victim referral cards that they are passing out in the IDP camps. The GBV Sub-Cluster also excludes local grassroots organizations from policy meetings by refusing to provide Haitian Creole translation during these meetings, which are held in French with English translation.

Eramithe Delva testified that security for women and girls in the camps is lacking due to insufficient facilities; the toilets and showers are located in public view, in violation of their right to dignity. Also, there are no permanent police patrols in most of the IDP camps. Ms. Delva said that since the 2010 earthquake, KOFIV has documented 459 cases of rape, including 96 during the months of January and February 2011 alone. They have worked with victims that range from 12 months to 60 years old.

In addition to security, women face rampant discrimination at all stages of the Haitian justice system. Rape victims must have a medical certificate proving they were raped before officials investigate and prosecute the case. This requirement is not mandated under Haitian law and this allows judges to continue to manipulate the administration of justice.

The Haitian State representatives responded that the petitioners' claim that women and girls are being raped at an alarming rate in the IDP camps is not consistent with data produced by an October 2010 Ministry of Women report, which concluded that only 1% of camp victims questioned by the Ministry experienced violence. This study was conducted in twelve of the twenty-two camps. Furthermore, the State created the GBV

Sub-Cluster to promote and protect women's rights. The GBV Sub-Cluster is made up of government agents and representatives of international and national organizations and is coordinated by the Haitian Ministry of Women and Women's Rights and the United Nations Population Fund (UNFPA). The State implemented women's shelters in police stations and also created 300 homeless shelters since the earthquake. They are also working on training more female police officers. Additionally, since the earthquake, forty-eight individuals were arrested and sentenced for rape under a 2005 law that came into existence as a result of the Haitian women's movement that lobbied for the criminalization of rape. With regard to the medical certificates, the State argued that since 2005, they have always been made readily available free of charge.

In response to Commissioner Dinah Shelton's question about the effect of the March 20, 2011 Haitian presidential elec-

tions on women's rights, the State responded that the movement to protect women's rights in Haiti would transcend governments. In response to a question posed by Second Vice Chair Rodrigo Escobar Gil regarding how the State has ameliorated the justice system for women victims of violence, the State responded that the Ministry of Women has worked with the GBV Sub-Cluster, the Haitian National Police, and the Ministry of Public Safety to draft a law that would create tribunals for cases dealing with violence against women. In response to a question regarding GBV Sub-Cluster cooperation with local grassroots organization posed by Commissioner Luz Patricia Mejía, the State responded that there is cooperation between UN agencies and government agencies and that this cooperation brings organizations like UN Women, UNFPA, and UNICEF together on various projects to protect women and children. With regard to Haitian Creole translation, the State representatives argued that when the GBV Sub-Cluster met with international organizations, the

meetings were held in French with English translation to make the international organizations feel included. Now, translation is available in Haitian Creole as well.

The December 22, 2010 granting of precautionary measures was a tremendous victory for the women and girls of Haiti. But, while there have been gains in helping women and girls fight sexual violence in the IDP camps of Port-au-Prince, the Haitian government has not been able to fully implement the Commission's recommendations. As such, the Haitian government and the international community still have much work left to protect the women and girls forcibly displaced by the January 12, 2010 earthquake.

Melanie Debrosse, a 2011 LL.M recipient from the American University Washington College of Law and guest writer for the Human Rights Brief covered this hearing.