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News From The Inter-American System

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NEWS FROM THE INTER-AMERICAN SYSTEM

by Cathleen Caron*

Inter-American Court Cases

Caso Villagrán Morales y Otros (Guatemala)

Facts: On June 15, 1990, armed men kidnapped four street children from *Las Casetas*, an area in Guatemala City known for high crime. The next day the bodies of Jovito Josué Juárez Cifuentes (17 years) and Federico Clemente Figueroa Túnchez (20 years) were found in the *Bosques de San Nicolas*. On June 17, the bodies of Julio Roberto Caal Sandoval (15 years) and Henry Giovanni Contreras (18 years) also were discovered in the same area. The children were killed by gunshots to the head and exhibited signs of torture. On June 25, 1990, another juvenile, Anstrum Aman Villagrán Morales (17 years), was executed by a gun shot to the head in *Las Casetas*. On September 15, 1994, the Center for Justice and International Law (CEJIL) and *Casa Alianza*, a shelter for street children in Guatemala City, petitioned the Inter-American Commission on Human Rights (Commission) to investigate the death of the children. On January 30, 1997, the Commission filed a petition with the Inter-American Court on Human Rights (Court) alleging that Guatemala National Police (PN) agents were responsible for the kidnapping, torture, and execution of the street children. (See article on Commission's arguments in Volume 6, Issue 3 of the *Brief*).

Decision: On November 19, 1999, the Court handed down the decision on the merits finding Guatemala in violation of numerous provisions of the American Convention on Human Rights (Convention). The Court found that the PN violated the right to personal liberty guaranteed in Article 7 by arbitrarily and illegally depriving the four youths of their liberty. The execution of all five street children by police agents violated the right to life (Article 4). The state also violated the right to humane treatment, especially the right to physical, mental, and moral security (Article 5.1) and the right to be free from torture (Article 5.2). Additionally, the Court declared the Guatemalan government in violation of the rights of the child (Article 19), right to judicial guarantees (Article 8.1), right to judicial protection (Article 25), and the duty to investigate violations of the Convention (Article 1.1). The Court also determined that Guatemala violated provisions of the Inter-American Convention for the Prevention and Sanction of Torture, specifically Articles 1, 6, and 8, which define the mechanisms to protect the rights established in Article 5 of the Convention. The Court ordered Guatemala to conduct an effective investigation to identify and punish the perpetrators of the executions. Reparations are now pending.

Caso Trujillo Oroza (Bolivia)

Facts: On December 23, 1971, José Carlos Trujillo Oroza, a 21 year old university student was arrested without a warrant and incarcerated without a trial in Santa Cruz, Bolivia. Several months into his incarceration, state authorities forcibly disappeared Trujillo. A petition was filed with the Commission on September 28, 1992. On June 14, 1994, Bolivia accepted responsibility for the allegations. After an attempt to reach a friendly settlement failed and Bolivia did not follow the Commission's recommendations to its satisfaction, the Commission petitioned the Court on June 9, 1999.

Decision: On January 25, 2000, the Court held a public hearing with the parties. At the hearing, Bolivia accepted its international responsibility for the disappearance of Trujillo in vio-

lation of the following provisions of the Convention: right to juridical personality (Article 3), right to life (Article 4), right to humane treatment (Articles 5.1 and 5.2), right to judicial guarantees (Article 8.1), and the right to judicial protection (Article 25). Bolivia also offered to apologize in writing to Trujillo's family, amend its laws concerning forced disappearances, open a criminal investigation into Trujillo's disappearance, punish the responsible parties, locate Trujillo's remains, and indemnify the victim's family. The Court recognized Bolivia's admission and offer as a positive development in the process and in the spirit of the Convention's principles. The case will now enter the reparations phase.

Caso de la Comunidad Mayagna (Sumo) Awas Tingni (Nicaragua)

Facts: On Nicaragua's North Atlantic Coast live the Mayagna de Awas Tingni (Mayagna Community) indigenous people. The Mayagna Community, consisting of approximately 142 families, maintains a traditional structure for political decisionmaking recognized under Articles 89 and 180 of the Nicaraguan Constitution and Article 11(4) of the Autonomous Regions of the Atlantic Coast of Nicaragua statute. On June 28, 1995, the North Atlantic Autonomous Region Board of Directors entered into a contract with Solcarsa Business, Inc. to initiate forest operations in an area that included the Mayagna Community's land. The Mayagna Community contested the contract and claimed that it had not been consulted with prior to the signing.

On October 2, 1995, the Mayagna Community filed a petition with the Commission and on May 28, 1998, the Commission submitted the petition to the Court. On August 19, 1998, Nicaragua filed a preliminary objection in accordance with Articles 46 and 47 of the Convention claiming that the petition was inadmissible because the petitioners had not exhausted internal remedies.

Decision: On February 1, 2000, the Court rejected Nicaragua's preliminary objection. The Court held that Nicaragua's failure to raise the issue in a timely manner during the first phase of the case before the Commission estopped Nicaragua from asserting a preliminary objection. In fact, Nicaragua already had taken steps to comply with the Commission's recommendations, which further indicates that the state failed to raise a clear and opportune objection. Due to the untimeliness of the objection, the Court did not consider the question of exhaustion of internal remedies. The Court will continue processing the case.

Caso Las Palmeras (Colombia)

Facts: On January 27, 1994, a petition was filed with the Commission concerning the extrajudicial executions of at least six people in Las Palmeras, Mocoa County, in the department of Putumayo, Colombia. The petition alleged that on the morning of January 23, 1991, members of the armed forces opened fire from a helicopter, injuring a six year old child walking to the rural school of Las Palmeras. Meanwhile, units of the National Police detained and executed several students, teachers, and workers at the school. The National Police acquitted the officers after a five day internal disciplinary investigation. The military internal review of the military personnel involved in the incident remains in the investigative stage after seven years. On July 6, 1998, the Commission submitted the case to the Court. On September 14, 1998, Colombia filed preliminary objections

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to the Commission's petition.

Decision: The Court issued its decision on Colombia's preliminary objections on February 4, 2000. The Court rejected three and accepted two of the objections. The first objection concerned the petition's failure to note that the internal military investigation had passed to the Attorney General of Human Rights' office. The Court held that this omission did not violate Colombia's due process rights in front of the Court. The second objection challenged the Commission's application of international humanitarian law and other international treaties to the case. The Court agreed with the Colombian government and ruled that the Court's jurisdiction was limited to interpretation of the Convention. The third objection concerned the Commission's use of the four 1949 Geneva Conventions. The Court accepted the objection and stated that its authority did not extend beyond the Convention. The state's fourth objection concerned the exhaustion of internal remedies. Even though Colombia asserted that progress was now being made in the case, the Court held that the prior delay of seven years was enough to merit a reasonable exhaustion of internal remedies. In the fifth and final preliminary objection, the Colombian government challenged the Court's authority to determine the perpetrator in the case of the seventh executed individual. The Court rejected the argument and stated that its authority lay in deciding the State's international responsibilities related to the execution of the seventh person, not in determining criminal responsibility of the individual who committed the crime. The case will continue to be processed before the Court.

Inter-American Commission Cases

Caso Enxet-Lamenxay and Kayleyphapopyet (Riachito) Indigenous Communities (Paraguay)

Facts: On December 12, 1996, the Enxet-Lamenxay (Lamenxay) and Kayleyphapopyet (Riachito) indigenous communities filed a complaint with the Commission claiming that Paraguay violated several provisions of the Convention in relation to their land claims. The petitioners claim that Paraguay violated the right to a fair trial (Article 8), the right to property (Article 21), freedom of movement and residence (Article 22), and the right to judicial protection (Article 25). The petitioners assert that between 1885 and 1950 Paraguay sold to foreigners the entire territory of the Lamenxay and Riachito indigenous communities. In 1991, the petitioners initiated internal legal procedures to recover their land.

Decision: On March 25, 1998, the parties reached a friendly settlement pursuant to Article 48 of the Convention. Paraguay agreed to acquire 21,884.44 hectares of land in the Pozo Colorado district for the communities to live upon. Additionally, Paraguay pledged to provide the communities with the necessary aide to move the families to the land and to give the communities sanitary, medical, and educational assistance, and to maintain the condition of the access roads. On July 27, 1999, Paraguay delivered the title deeds to the land to the petitioners. The Commission will continue monitoring the parties' compliance with the friendly settlement.

Caso Andrés Aylwin Azócar y otros (Chile)

Facts: Eleven Chilean citizens petitioned the Commission on January 9, 1998, challenging Chile's constitutional provision establishing the unelected positions of designated senators and senators-for-life. General Augusto Pinochet is a senator for life under this provision. The petition alleges that this arrangement violates the right to participate in government (Article 23) and

the right to equal protection (Article 24) of the Convention. Specifically, the petitioners contend that the institution of senator-for-life distorts popular sovereignty, rendering elections unauthentic in light of Article 23(1)(b), which protects the right to vote and universal and equal suffrage, and damages the institution of representative democracy. The designation of specific authorities as senators (designated senators) also violates the right to equal voting, and makes it practically impossible to modify non-democratic institutions established in the Chilean Constitution. The practice also violates Articles 23(1)(c) and 24 because it denies Chilean citizens equal access to public office by limiting public office to a reduced group of people at the exclusion of others. The arrangement affects 20 percent of the senate seats.

Decision: On December 27, 1999, the Commission ruled that Chile's constitutionally mandated practice of unelected designated senators and senators-for-life violated Articles 23 and 24 of the Convention. The Commission recommended that Chile change its laws to guarantee Chilean citizens the right to elect and be elected in equal conditions in accordance with Articles 23 and 24 of the Convention. Commissioner Robert Goldman dissented from the majority's recommendations. He contended that the Convention does not definitively define how the representative democratic ideals of the Convention should be institutionalized. In particular, there are no provisions designating the manner by which legislative seats should be distributed. He argued that the concept of senators-for-life and designated senators has not rendered the principle of representation ineffective and therefore the arrangement does not violate the Convention. ☐

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