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## News from the Inter-American System

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## NEWS FROM THE INTER-AMERICAN SYSTEM

by Nicole L. Grimm\*

Throughout 1998, the Inter-American Court of Human Rights (Court) released a number of decisions in individual cases that the Inter-American Commission on Human Rights (Commission) submitted to the Court. The Commission presented these cases in accordance with Article 61 of the American Convention on Human Rights (Convention), which permits States Parties and the Commission to submit matters to the Court. In deciding these cases, the Court relied on the jurisdiction it possesses under Article 62 of the Convention, which gives the Court the authority to decide cases involving States Parties to the Convention and regarding the Convention's interpretation or application. These cases include, *inter alia*:

### **Caso Benavides Cevallos (Ecuador)**

**Facts:** The Commission presented this case to the Court on March 21, 1996. The Commission alleged that Consuelo Benavides Cevallos was illegally and arbitrarily arrested and held by state agents operating without judicial authorization or supervision. She was subsequently tortured and killed. State authorities failed to adequately investigate the crime until three years after Benavides Cevallos' death, when her body was located and identified. After her death was confirmed, the government continued to fail to recognize its responsibility or make reparations to her family. The family presented a petition before the Commission, which initiated proceedings in October 1989.

On March 13, 1998, the Commission alerted the Court that it had received a proposal from Ecuador regarding the possibility of reaching a friendly settlement, and, on June 1, 1998, Ecuador informed the Court that it and Benavides Cevallos' family had reached an agreement. The Court held an audience with the parties to consider the accord on June 11, 1998. During this session, Ecuador acknowledged its responsibility for Benavides Cevallos' death and disappearance and stated that the Ecuadorian government was taking measures to publicize its responsibility for the matter throughout Ecuador. Furthermore, it stated that it intended to make the equivalent of U.S. \$1 million in reparations for the harm it caused the victim and her family, and presented a check in that amount to the victim's family on July 12, 1998.

**Decision:** On June 19, 1998, the Court released its decision. Due to the parties' friendly settlement, the Court concluded that the case regarding the original allegations against Ecuador was over. The Court found that Ecuador, as the state acknowledged, violated its obligations

under the Convention, including the duty of States Parties to respect the rights to juridical personality (Article 3), life (Article 4), humane treatment (Article 5), personal liberty (Article 7), a fair trial (Article 8), and judicial protection (Article 25). The Court approved the amount of reparations that Ecuador made and required the government to continue investigating the case in order to punish the responsible parties. Finally, the Court reserved the right to supervise Ecuador's implementation of the decision.

### **Caso Blake (Guatemala)**

**Facts:** The Commission presented this case to the Court on August 3, 1995. The Commission alleged that members of a Guatemalan "civil patrol," a paramilitary body made up of civilians with the purpose of maintaining community security, detained and killed Nicholas Chapman Blake on March 28, 1985, and buried his body. In August 1987, civil patrol commanders ordered his body to be disinterred, burned, and re-buried elsewhere. During the next seven years, his family went to great lengths looking for the body and, as he was a U.S. citizen, solicited the help of the U.S. government, the U.S. embassy in Guatemala, and the Guatemalan government. After a series of deals with civil patrol leaders who provided them with information, Blake's family found his remains in June 1992. As of the date of the Court's decision, Guatemalan authorities had neither terminated their investigation of the crime nor punished any individuals suspected of being responsible.

In a July 2, 1996, decision dealing with preliminary questions in the case, the Court decided that Blake's detention and murder were completed in March 1985 and were not crimes of a continuing character.

**Decision:** The Court released its decision on January 24, 1998. Before issuing its determinations on the merits of the case, it addressed its jurisdiction over the crimes. Based on the fact that Guatemala did not submit itself to the Court's jurisdiction until March 9, 1987, the Court concluded that it did not have the authority to rule on violations of the Convention that occurred before that date. Due to its 1996 preliminary decision, the Court determined that Blake's detention and murder occurred before Guatemala became subject to the Court's jurisdiction.

In examining the merits of the case, the Court found that Guatemala's civil patrols acted as state agents, receiving training, equipment, and direction from the Guatemalan army at the time of Blake's death and ongoing disappearance, and, thus, their actions could be

imputed to Guatemala. Because Blake's detention and death occurred before Guatemala became subject to the Court's jurisdiction, the Court held itself unable to determine whether Guatemala violated either Blake's right to liberty (Article 7) or life (Article 4) under the Convention. It also found that Blake's family did not utilize available judicial processes in Guatemala, and, as a result, the Court could not conclude that they were denied their right to judicial protection (Article 25). It did find that the civil patrol's actions and the continuing intransigence of Guatemalan authorities violated the right of Blake's family to a fair trial (Article 8.1), and that Blake's disappearance and the cruel treatment of his remains violated his family's rights to physical, mental, and moral integrity (Article 5). The Court ordered Guatemala to fully investigate Blake's death and punish those responsible, and it approved the initiation of reparation procedures. One dissenting and two concurring opinions accompanied the decision.

### **Caso Garrido y Baigorria (Argentina)**

**Facts:** The Commission submitted this case to the Court on May 29, 1995. The underlying events began in April 1990, when individuals dressed in police uniforms of the city of Mendoza, Argentina, detained Adolfo Argentino Garrido Calderón and Raúl Baigorria Balmaceda. Witnesses later saw them being interrogated at Mendoza police headquarters and watched them leave in police vehicles. Their families were notified soon after the initial arrests, but they were never able to locate Garrido and Baigorria despite pursuing a wide variety of recourse, including *habeas corpus* petitions, criminal and civil complaints, and a case before the Commission.

On September 11, 1995, Argentina admitted its responsibility before the Commission for the two victims' forced disappearances, and it reiterated this acknowledgment before the Court in February 1996. At that time, the Court issued an opinion directing the parties to reach a settlement within six months. On January 31, 1997, the Court determined that the parties were unable to reach an agreement and, as a result, initiated proceedings to determine the types of restitution Argentina owed the victims' families.

**Decision:** The Court released its decision on August 27, 1998. It determined that, according to Article 63 of the Convention, Argentina was obliged to make reparations to the families of the victims

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whose rights it had violated. It placed this responsibility on Argentina despite the government's argument that it was Mendoza authorities, not federal agents, who had perpetrated the disappearances. The Court responded that the federal government of Argentina had obliged itself to protect the rights guaranteed in the Convention when it became a State Party and, therefore, was estopped from shifting responsibility to a regional governmental unit. The Court ordered Argentina to pay the equivalent of U.S. \$111,000 to Adolfo Garrido's family and U.S. \$64,000 to Raúl Baigorria's family, and to pay the equivalent of U.S. \$45,500 to the families for court and attorney costs. In addition, the Court obliged Argentina to investigate the disappearances and prosecute the parties responsible for the crimes.

### **Caso Paniagua Morales and Others (Guatemala)**

**Facts:** The Commission presented this case to the Court on January 19, 1995. The Commission asked the Court to determine whether Guatemalan state agents violated the human rights of 11 alleged victims by arresting, arbitrarily detaining, and subjecting them to inhumane treatment and torture between 1987 and 1988. Six of the victims were killed. In the majority of the cases, witnesses observed the victims being arrested or kidnapped by state agents and forced into light colored "panel"-style trucks. Most of the victims who were killed died from similar injuries involving knife wounds to the throat and body.

**Decision:** On March 8, 1998, the Court released its decision. The Court determined that Guatemala violated the right to liberty (Article 7) of eight of the victims, the right to life (Article 4) of five victims,

the right to personal integrity (Article 5.1) and freedom from torture and inhumane treatment (Article 5.2) of seven victims, the right to a fair trial (Article 8.1) of six victims, and the right to judicial protection (Article 25) of five victims. It directed Guatemala to initiate a genuine and effective investigation into the cases in order to discover and punish the persons responsible, and held that Guatemala is obliged to pay reparations to the victims and their families. The Court approved the establishment of proceedings for determining an appropriate amount of reparations. ☉

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violation of fundamental human rights that are established in several international instruments.

The principal argument is that District residents are denied the rights to equality and to full participation in their government in violation of the American Declaration of the Rights and Duties of Man (American Declaration). The United States is bound under this document by virtue of its OAS membership. Article 20 of the American Declaration states in part that "every person . . . is entitled to participate in the government of his country, directly or through his representatives . . ." District residents are denied this basic right because they lack congressional representatives who are empowered to vote. Without a vote, District residents are unable to influence congressional decisions and procedures that directly affect the District, and they lack the legislative representation needed to influence laws passed by Congress that govern their daily lives. For example, Congress appropriates money each year to finance District of Columbia operations, and, lacking congressional representation, District residents are unable to influence either the amount or allocation of these funds.

In addition, the petitioners argue that Articles 1 and 2 of the American Declaration are violated. Washingtonians' rights to life and liberty, codified in Article 1, are vulnerable to decisions made by Congress because of its ability to promulgate legislation that directly affects the District. In relation to Article 2, the right to equality before the law, the petitioners contend that District residents are treated unequally because they do not enjoy the right to a meaningful vote like other U.S. citizens.

The petitioners also argue that the

United States violates several articles of the International Covenant on Civil and Political Rights (ICCPR), which entered into force in 1976 and which the United States ratified in 1992. ICCPR Article 25 reiterates well-recognized voting principles comparable to those established in the American Declaration, namely, the right to partake in public affairs through elected representatives and the requirement that suffrage be universal and equal. The petitioners assert that D.C. citizens' suffrage is not equal to that of other U.S. citizens, and is therefore in violation of Article 25, because they are not able to use their vote to directly influence national politics. Moreover, the record indicates that Congress has enacted laws that, in some cases, directly counter the will of District residents. The petitioners also cite the Universal Declaration of Human Rights (UDHR) to bolster this argument. Now widely regarded as customary international law, the UDHR establishes in Article 21 a similar provision concerning voting rights and participation.

Furthermore, the petitioners contend a violation of the ICCPR's Article 1 right to self-determination. Because the fundamental nature of the right to self-determination is that it must exist for all people, the petitioners interpret D.C. citizens' inability to participate in national government affairs as a violation of this bedrock principle. Specifically, Congress has repeatedly denied the will of District residents in matters pertaining to the control of local governmental affairs and Washingtonians' ability to participate in national politics.

Another alleged violation of the ICCPR is found in Article 2, which guarantees that the rights embodied in the ICCPR shall be applied in an equal manner without distinction. It is uncontested that District residents are U.S. citizens. As such, they are burdened by obligations that they share

with all other U.S. citizens, such as the requirement to pay federal taxes. Conversely, however, they should also enjoy the full gambit of freedoms established by the U.S. Constitution. Despite the duties that Washingtonians must carry out as U.S. citizens, D.C. residents are denied the full enjoyment of their rights due to their disenfranchisement, based on the simple fact that they reside within Constitutionally mandated boundaries, as explained in the previous section. This distinction based solely on residency, asserts the petitioners, is a violation of Article 2.

Finally, the petitioners discuss the various unsuccessful strategies that District residents have employed to remedy their disenfranchisement through domestic procedures, including judicial challenges and lobbying Congress to pass a voting rights act. The brief predates the filing of *Alexander v. Daley* and thus does not refer to it. A final decision on the claim's admissibility and merits remains pending before the Commission.

### **Conclusion**

One of the most quixotic features in this ongoing debate is that District residents allege violations of the very principle that the United States champions around the globe: democracy. The irony is inescapable. Through the efforts of advocates in cases before the federal courts and the Inter-American Commission, District residents may one day enjoy the full spectrum of rights, as well as duties, that their fellow U.S. citizens take for granted. ☉

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