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Alumnus Profile: Françoise Roth

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ALUMNUS PROFILE

Alumnus Works Around the World for Human Rights

By Nicole Grimm

Françoise Roth, who received her LL.M. from WCL in 1993, has been working as a Legal Advisor for MINUGUA, the UN Human Rights Verification Mission in Guatemala, since 1995. MINUGUA was created in March 1994 by the Global Human Rights Agreement between the Guatemalan government and Guatemalan National Revolutionary Unity (URNG) rebels, and began work in November 1994. Its mandate is to verify the parties' compliance with the Agreement.

Before coming to Guatemala, Roth studied in her native France and interned with the UN Human Rights Centre in Geneva. She came to WCL in 1993 to pursue her LL.M. While at WCL, she co-founded and wrote for *The Human Rights Brief*, organized teams of student participants in the Rene Cassin Moot Court competition in Strasbourg, France, and interned for the International Human Rights Law Group. Her

studies at WCL gave her the opportunity to meet members of the international human rights community, including other LL.M. students, and WCL professors, who she felt were attentive, open to student initiatives, and willing to serve as professional contacts for students trying to enter the human rights field.

After completing her LL.M. degree, Roth accepted a full-time position with the Law Group. During her two years there, she helped to develop the Law Group's In-Country Empowerment Project in Kivu, Zaire. This unique program assists human rights organizations in the eastern part of Zaire by helping them to develop strategies for lobbying, defining their mandates, and develop projects. While working on the Empowerment Project, Roth coordinated the Project's Zaire activities with the Law Group's D.C. office. On an international level, she assisted in strategies for human rights lobbying by examining national



Photo Courtesy of Claudia Martin

Françoise Roth, with Javier Mena (behind), another Legal Officer at MINUGUA and an incoming LL.M. at WCL in Fall '97, and Will Harrell, (right) currently an LL.M. student at WCL.

governments and international organizations. She also collected information about human rights violations in Zaire for *Medecins Sans Frontieres* (Doctors Without Borders) and disseminated it to the

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signed and which constituted the principal evidence against him.

When the defendants were finally assigned legal counsel, it was in the form of two students from the San Carlos University of Guatemala. At the time, the Penal Procedure Code permitted substitution of a non-lawyer for a lawyer, however, this provision applied only in jurisdictions where there are fewer than four lawyers. Dozens of licensed attorneys practice in Esquintla, the jurisdiction where these defendants were tried.

The student attorneys were not assigned to the case until the early proceedings were completed. They were supervised by a faculty member who is a licensed attorney, but the student-faculty ratio in this clinical program was sixty to one. In addition to missing the early proceedings because they had not yet been assigned to the case, the students missed many of the subsequent proceedings following their assignment to the case, including the first scheduled hearing before the presiding judge.

This arrangement did not satisfy defendants' right to "effective assistance of counsel" as required by Article 146 of the Penal Procedure Code.

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There were also due process problems during the trial itself. Nearly all witness statements were taken during the period when defendants were detained but had not yet been assigned legal counsel. These statements were used at trial as evidence against defendants, but the defendants were denied the right to confront and cross-examine these witnesses because the judge refused to allow them to be called to testify at trial.

After the conviction, a series of appeals and requests for injunctions seeking a stay of execution for the condemned ensued. Lawyers and judges, long subject to threats and attacks in Guatemala, received direct and indirect threats of violence for filing or hearing motions to stay the executions. It is therefore not surprising that each attempt to reverse or stay the sentence was rejected by the courts. President Arzu rejected a clemency plea from the condemned and his position was not wavered by a similar appeal from the Guatemalan Conference of Bishops and Pope John Paul II himself.

The Commission Responds

On August 13, 1996, defendants' counsel filed a Petition for Precautionary Measures with the Inter-American Commission on Human Rights of the OAS (the Commission) under Article 29 of the Commission's Regulations. This is an equitable remedy that permits the

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UN, the U.S. State Department, the U.S. Congress, and members of the press. Finally, she spent a month monitoring human rights conditions in a Kivu refugee camp, which she describes as one of the most difficult but important experiences of her life.

Roth's current position with MINUGUA represents her first field experience in Latin America. In her position as Legal Advisor, one of her primary duties is to receive and verify complaints about human rights violations. She does this by speaking to Guatemalan citizens and traveling

throughout her assigned region of Petén to visit the sites of alleged violations. She also monitors the response of the administration of justice to human rights complaints by speaking to the officials in charge of human rights investigations. Roth believes that the Guatemalan government and military are beginning to show more respect for human rights, but problems of impunity, arbitrary detentions, and the inadequate administration of justice still remain. MINUGUA's most recent report reflects this view and comments specifically that members of the mili-

tary no longer perpetrate the massive human rights violations that were once widespread. Roth feels that MINUGUA has played an important role in Guatemala by breaking the wall of silence that once surrounded human rights violations. By accepting and monitoring complaints, MINUGUA allows people to come forward and report abuses that would previously have remained invisible. Roth is enthusiastic about working in Guatemala and enjoys its excitement and diversity. She plans to remain in Latin America for the foreseeable future. ☉

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a resolution which urged the Government of Suriname to "report to the Inter-American Court of Human Rights on the status of compliance with the Court's judgements."

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There are a variety of proposals, originating from both inside and outside the System, that seek to address the perceived weaknesses in the Inter-American contentious jurisdiction mechanism. Regarding the enforceability of the Court's judgements, a closer link between the OAS's political bodies and the Court is often cited as highlighting the latter's work, while giving enforcement concerns more legitimacy within the System itself. In order to increase the number of cases referred to the Court and establish a more reliable referral procedure, numerous authorities have suggested adopting a concrete referral procedure, perhaps by updating the Commission's Regulations, that would be applied to every case before the Commission.

Additionally, the Commission could request an advisory opinion from the

Court in order to gain its views on the subject and promote greater institutional cooperation. By avoiding the possibility of competing roles before the Court in contentious cases, the Commission could assume a more neutral position in contentious case proceedings. As some scholars have previously suggested, the Court could follow the practice of the European Court of Human Rights, and allow the victim direct legal representation before the Court.

These are but a few possibilities that would address the current weaknesses of the System's contentious jurisdiction. It should be noted that almost all of these proposals — the enforceability of the Court's decisions, the role of the Commission in contentious case proceedings, and the referral capacity of the Commission — while ambitious in scope, require reinterpretations of existing

These proposals require reinterpretations of existing policies and of the current framework, rather than the politically challenging task of amending the Convention.

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These examples are some of the most salient aspects of the Inter-American contentious jurisdiction mechanism that

have proven, through practice and public scrutiny, to be in need of improvement or refinement. There are, however, other aspects of the Inter-American System's contentious jurisdiction mechanism that critics and scholars have cited as needing reform. Often mentioned subjects include: (1) the Court's geographical separation from the other elements of the Inter-American System; (2) the drawbacks of a part-time Court; and (3) the lack of individual access to the Court's contentious jurisdiction. In order for the Court's contentious jurisdiction to be as effective as possible, these other areas should, in time, be addressed as well. ☉

On November 26, 1996, the Inter-American Commission on Human Rights released a report called *Toward a New Vision of the Inter-American Human Rights System*, (distributed by the Office of the Secretary General and currently under consideration in the Political-Judicial Committee of the OAS) which examines the mechanisms of the Inter-American Human Rights System in detail and proposes needed reforms. Further information about this report may be obtained by contacting the Commission in Washington, D.C. at (202) 458-6002.