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## News From The Inter-American System

William Clark Harrell

*American University Washington College of Law*

Richard J. Wilson

*American University Washington College of Law, [rwilson@wcl.american.edu](mailto:rwilson@wcl.american.edu)*

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## NEWS FROM THE INTER-AMERICAN SYSTEM

by William Clark Harrell & Richard J. Wilson \*

### Inter-American Commission on Human Rights

In December 1996, the Commission sponsored a seminar on "The Inter-American System for the Promotion and Protection of Human Rights," held at OAS headquarters in Washington, D.C. Approximately 150 invited governmental representatives, experts, and practitioners in the field of human rights attended the conference, which included panels and spirited discussion on issues concerning the development of the system. Topics included the structure of the system, admissibility, and processing of individual cases, the influence of the regional system in domestic law, the contentious and advisory jurisdiction of the Court, new challenges in the system, such as drug trafficking, terrorism, and the expanded jurisdiction of the Commission under new instruments such as the Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women.

A Special Session of the Commission on Juridical and Political Matters of the Permanent Council was held in April 1997. The purpose was to work with governmental experts to evaluate the Inter-American system of human rights protection. Non-governmental organizations (NGOs) were not permitted to participate or comment, and in fact, the Governments of Mexico and Peru co-sponsored a failed motion to exclude human rights NGOs from the public audience. The agenda prepared for the event was divided into the human rights promotional mandate and the defense mandate. The Commission also continued a series of regional meetings to consider its Draft Inter-American Declaration on the Rights of Indigenous Peoples and hopes to present a final draft of the Declaration for consideration by the OAS at its 1997 General Assembly meeting.

In March 1997, the Commission released its 1996 Annual Report on the activities of the Commission and the decisions of the Commission during 1996. The Commission made determinations on preliminary issues or on the merits in, *inter alia*, the following cases:

#### 1. *X and Y v. Argentina*

**Facts:** Petitioners in this case, Ms. X and her thirteen-year-old daughter, Ms. Y, were subjected to vaginal inspections when they visited Ms. X's husband who was incarcerated. The prison routinely performed these inspections on all female visitors to prevent drugs being smuggled in. This case was brought before the Commission in 1990 by Argentine attorneys and Human Rights Watch/Americas.

**Decision:** The Commission issued a report which held that "by imposing an unlawful condition for the fulfillment of their prison visits without judicial and appropriate medical guarantees," and by carrying out these searches, Argentina had violated Articles 5, 11, and 17 of the American Convention and recommended that Argentina adopt legislation to end the violation.

#### 2. *Marzioni v. Argentina*

**Facts:** Petitioner had challenged the constitutionality of a law limiting his compensation from a work-related injury. His claim was rejected by the trial court, an appellate court, and the Supreme Court of Argentina. Mr. Marzioni petitioned the Commission, arguing that this constitutes a violation of his right to equal protection of the law under Article 24 and his right to property under Article 21.

**Decision:** The Commission held this case to be inadmissible. In its decision, the Commission reiterated and amplified its development of the "fourth instance formula," indicating that it is not the role of the Inter-American Human Rights System to provide extraordinary appellate review of domestic decisions which have already been appealed in the "second or third instance" by an intermediate or supreme court within the domestic system. The Commission held that it would refuse review, in cases such as this where the petition "contains nothing but the allegation that the decision [by the domestic court] was wrong or unjust in itself."

#### 3. *Héctor Marcial Garay Hermosilla, et al. v. Chile*

**Facts:** This case involves the Amnesty Decree Law that was adopted in 1978 by the military regime then in power in order to pardon the crimes committed by that regime between 1973 and 1978. The constitutionality of the amnesty law was challenged in the domestic courts, but in 1990, the Chilean Supreme Court held that it was constitutional and that enforcement of the law by the Judiciary was mandatory. This petition was filed on behalf of 70 individuals who were disappeared during that period, and argues that the amnesty law violates these individuals' right to justice.

**Decision:** The Commission issued a report on the merits in this case, finding that the amnesty law violates Articles 8 and 25, and that by upholding it, Chile also violated Articles 1 and 2 of the American Convention. The Commission recommended that Chile amend its domestic legislation to allow prosecution of the guilty parties and to make compensation available to the families of the victims. The Commission issued similar findings in another group of claims filed in response to the amnesty law, known collectively as *Juan Meneses v. Chile*.

#### 4. *Francisco Martorelli v. Chile*

**Facts:** The Petitioner authored a book titled "*Impunidad diplomática*" that related to the incidents which led to the departure of the former Argentine Ambassador to Chile. The book was published in Argentina and was scheduled to go on sale in Chile, but a Chilean Appeals Court issued an injunction prohibiting the entry and sale of the book in Chile. The Supreme Court subsequently upheld the injunction, and additionally, several criminal actions were filed against the author, alleging that the book was slanderous and defamatory. This case was brought before the Commission by Human Rights Watch/Americas and the

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Center for Justice and International Law (CEJIL).

**Decision:** In May 1996, the Commission issued a report finding that in banning the book, Chile violated Article 13 of the Convention, and recommended that the State take measures to ensure that the author is able to circulate and market the book in Chile.

#### 5. *Dianna Ortiz v. Guatemala*

**Facts:** Petitioner is a United States citizen and Catholic nun who in 1989 was living in Guatemala and working with the indigenous population in the region of Huehuetenango. She began to receive threatening letters, and was later abducted, tortured, and raped by state agents.

**Decision:** In its report, the Commission held that Guatemala had violated Sister Ortiz's right to humane treatment, personal liberty, a fair trial, privacy, freedom of conscience and religion, freedom of association, and judicial protection under Articles 5, 7, 8, 11, 12, 16, and 25.

#### 7. *María Mejía, et al. v. Guatemala*

**Facts:** In 1982, the military regime created a system of Civilian Autodefense Patrols (known as PACs) as part of its efforts to end the guerrilla movement by relocating indigenous populations and eradicating "all suspicious persons and communities." When members of the community known as Centro Parraxtut Segundo refused to participate in the PACs, local military leaders and patrol chiefs took action against the community. As a result, María Mejía was killed, her husband was seriously wounded, and 39 other community members were threatened. The case was brought before the Commission by HRW/Americas, CEJIL, Emily Yozell, and CERJ, a Guatemalan NGO.

**Decision:** The Commission's report concludes that Guatemala failed to comply with its obligations under Article 1, and is therefore responsible for violations of the right to life of María Mejía, as well as violations of numerous rights of Pedro Castro Tojín, Amílcar Mén-

dez Urizar, and 39 members of the Parraxtut Segundo community, specifically the right to humane treatment, freedom from slavery and involuntary servitude, freedom of movement and residence, and rights to due process, judicial guarantees, and judicial protection. The report further recommends that the State initiate a thorough investigation, provide reparations to the victims, and take steps to ensure that these events are not repeated.

The friendly settlement of disputes is an extremely important part of the Commission's work, although it does not receive as much public attention as the published decisions. In 1996, the Commission settled cases from Argentina, Colombia, Guatemala, Honduras, Nicaragua, and Paraguay.

In Argentina, the federal government and the province of Mendoza participated in the creation of an ad-hoc investigatory commission and an eventual arbitral award in the forced disappearance cases of *Paulo C. Guardatti*, and *Garrido and Baigorria v. Argentina*, then pending at the Inter-American Court.

In Guatemala, the Commission, through settlement of the *Colotenango Case*, facilitated the dissolution and disarmament of the PACs in August, while the friendly settlement discussions were also undertaken in a case before the Commission on discrimination against women in the Civil Code. Guatemala has also agreed to enter friendly settlement negotiations in the *La Exacta Case*. *La Exacta* involves the August 1994 killing of four striking farm workers by police, and the failure of the Labor Courts to process the workers' claims against their employer. The Government of Guatemala has also committed to providing "humanitarian assistance" to the family of Alioto Lopez Sanchez, pending the outcome of criminal and civil proceedings in the case. Alioto Lopez, a Guatemalan law student and activist, was shot and then beaten to death by the National Police after a student protest in November 1994.

In Nicaragua, the government and members of the Awas Tingni indigenous community met to discuss the issue of delineation of ancestral lands in the

community and the granting of commercial concessions to foreign companies. Precautionary Measures were ordered in that case.

In the Paraguayan matters, the petitioners in the case seek the extradition of an Argentine couple accused of kidnapping two infants who were taken from mothers who have been detained or disappeared. Extradition was recently granted by the Paraguayan court. Another three cases allege delays in resolution of domestic criminal matters pending since 1989. The parties will meet on both cases to decide on bases for agreement in the matters.

#### Inter-American Court of Human Rights

In September 1996, the Court adopted new regulations governing its operations, and these took effect in January 1997. The Court, based in San José, Costa Rica, held its 35th Regular Session in February 1997, and its 36th Regular Session in April 1997. During these sessions, the Court considered, *inter alia*, the following cases:

##### 1. *Jean Paul Genie v. Nicaragua*

**Facts:** The case arises from the killing of Jean Paul Genie in October 1990 by bodyguards of General Humberto Ortega. The bodyguards were members of the military, and their prosecution falls under the jurisdiction of the military courts, but was still pending after several years. The case was brought before the Commission by a Nicaraguan attorney, HRW/Americas, and CEJIL. The application alleges that Nicaragua violated the Article 8 right to a fair trial.

**Stage of the Proceedings:** The Court issued a decision on the merits in January. In its controversial decision, the Court held that the long delay did violate Article 8, but found no violation in the fact that the bodyguards could only be tried by a military court.

##### 2. *Isidro Caballero Delgado and María del Carmen Santana v. Colombia*

**Facts:** Two members of Movimiento 19 de Abril, formerly a rebel group and now a political party, were disappeared



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by the Colombian military. This case was brought by Comisión Colombiana de Juristas, CEJIL and HRW/Americas.

**Stage of the Proceedings:** In January 1997, the Court released its decision awarding damages to the families of both victims.

### 3. *Adolfo Garrido and Raul Baigorria v. Argentina*

**Facts:** The victims in this case were last seen in 1990 as they were arrested by the Provincial Police of Mendoza. Their bodies have never been found, and the police have never acknowledged that the arrests even took place. The Government has accepted the applicant's

statement of the facts and acknowledged responsibility for the disappearances.

**Stage of the Proceedings:** In spring 1996, the Court had granted the parties six months to agree on reparations. In early 1997, the Court concluded that as the parties had not reached an agreement on reparations, it would reopen its consideration of the matter. The parties were ordered to submit their arguments and evidence on the reparations issue by June 1997.

In January 1997, the Commission referred the following matter to the Court:

### *Anstrum Villagran Morales (Los Bosques de San Nicolas) v. Guatemala*

**Facts:** This case involves the execution of five street children who were detained

by the National Police on June 15, 1990. Their bodies were found two days later with signs that the children had suffered severe torture, including acid burns as well as eyes and ears cut off. Two police officers were prosecuted in the domestic system but this prosecution was unsuccessful because the investigation failed to uncover sufficient evidence. The case was brought to the Commission by CEJIL and Casa Alianza in Guatemala.

**Stage of the Proceedings:** The Government has filed an answer and the case is in the written proceedings stage. ☺

\* Richard J. Wilson is a Professor of Law and Director of the International Human Rights Law Clinic at WCL.

## WCL Hosts Inter-American Human Rights Moot Court Competition

The Second Annual Inter-American Human Rights Moot Court Competition was held from May 19 - 23, 1997. WCL was honored to have Dr. Carlos Reina, President of Honduras and Past President of the Inter-American Court of Human Rights serve as Presiding Judge during the Final Round of the Competition. Twenty-four teams from 12 countries argued the hypothetical case of *Cecilia Herold, et al. v. The State of Pacifica*. \*The hypothetical involved issues for which there is little case law within the Inter-American System and was written by Elizabeth Abi-Mershed, an Attorney Specialist in Human Rights at the Inter-American Commission on Human Rights.

In the *Herold* case, the petitioners are three women who formed a political party with the stated goal of increasing the political involvement of all citizens, particularly women, seeking a more equitable distribution of tax revenues, and rooting out corruption in local government. This party challenged the established power-structure, that placed political control in the hands of male landowners, and as a result, the women suffered harassment and discrimination that eventually escalated to include a mugging and assault, a break-in at the party's offices, and the sexual assault of Cecilia Herold.

Because there was limited evidence of direct state involvement, the case focused on whether the crimes of private individuals could be imputed to the State of



(Left to right) Finalists Aldo Federico Calliari and Maria Elisa Gallo, representing Universidad Nacional de Tucuman, Honduran President Carlos Roberto Reina, Finalists Pablo Trevisan and María Isabel Ricciardi of Universidad Nacional de La Plata, and Dean Claudio Grossman.

Pacifica if it failed in its duty under Article 1.1 of the American Convention to ensure all persons the free and full exercise of the rights guaranteed by the Convention. The case looked at the ineffectual efforts of the local police to protect the women from these crimes or to adequately investigate and prosecute the crimes after they occurred.

Of particular concern in this case is the law in Pacifica that requires a state doctor to examine every alleged rape victim in order for the perpetrator to be prosecuted. In this case, the state doctor was unavailable for 32 hours, and as a result, test results were inconclusive and the prosecutor determined that

there was insufficient evidence to prosecute the alleged perpetrators. Petitioners alleged that the law, and particularly its application in this case, violated their right to judicial protection under Articles 8 and 25. The issues in this case, for the most part, remain unsettled within the jurisprudence of the Inter-American System and provided for a spirited competition.

In addition to the competition, the participants took part in a seminar entitled "Presenting a Petition Before the Inter-American System for the Protection of Human Rights," including an introduction and discussion with Jorge

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