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## Suriname Faces Past Human Rights Violations: The Gangaram-Panday Case

by Claudia Martin and Françoise Roth

The first issue of *Human Rights Brief* featured an article on the decision of the Inter-American Court of Human Rights (the Court) in the *Aloeboetoe et al.* case involving the 1987 murder of seven Saramaca Maroon men by the former Surinamese military regime. After Suriname conceded liability, the Court considered the social structure of the Saramaca tribe in determining the compensation to be paid to the survivors of the victims.

A subsequent decision by the Court, also involving human rights abuses in Suriname, was rendered on January 21, 1994. The *Gangaram-Panday* case dealt with the arbitrary detention of Surinamese national, Choeramoenipersad Gangaram-Panday, by the former government's military police and his subsequent death. The police reported that Gangaram had hung himself while in custody a few days after his arrest.

The petitioners in both the *Aloeboetoe* and *Gangaram-Panday* cases

were represented before the Court by Professor Claudio Grossman, co-director of the Center for Human Rights and Humanitarian Law and acting dean of the Washington College of Law, The American University.

The Inter-American Commission of Human Rights (the Commission) submitted the case to the Court on August 27, 1990. The Commission contended that Suriname was responsible for violating several sections of the American Convention on Human Rights, in pertinent part, Articles 1 (obligation to respect rights), 2 (domestic legal effects), 4 (right to life), 5 (right to humane treatment), 7 (right to personal liberty), and 25 (right to judicial protection). It requested the Court to award just compensation to the victim's next of kin.

The Commission members were split four to three on the issue of the Commission's claim that facts proven before the Commission should be given conclusive effect by the Court. This marked the first time that the Court had been split on a portion of a decision. In accordance with the case law, the majority held that the Court exercised full jurisdiction over all issues relevant to the case. The Court concluded that because it was not an appellate tribunal, it was not restricted by prior decisions of the Commission. Its power to review all questions of fact and law was derived from its character as sole judicial organ in matters concerning the Convention.

On the offer of evidence and the burden of proof, the Court moved away

from earlier decisions by requiring a higher degree of proof in evidentiary material and by placing the burden of proof on the Commission. The Court placed the *onus probandi* on the government only as to the legality of the detention. The failure of the government to produce the evidence necessary for that issue led the Court to presume the irregularity of the detention. Thus, the Court awarded US \$10,000 to Gangaram's wife and children as compensation for his illegal detention.

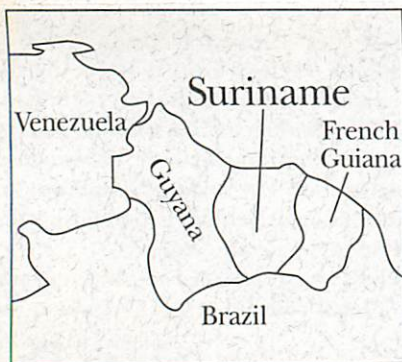
Regarding the allegations of torture, the Court required the Commission to demonstrate by conclusive and convincing presumptions that the victim underwent ill-treatment. The Court determined that testimony by a government witness as to the presence of blood in the victim's scrotum, resulting from a blow applied shortly before the victim's death, did not reach the standard required.

While ruling that there was enough evidence to prove that the victim died by hanging, the Court concluded that the Commission did not meet its burden of establishing Suriname's responsibility for the death. The Court considered the two contradictory government autopsies—one concluding that the victim died as a consequence of a violent death, and the other asserting that the death was not violent—as falling below the necessary standard of proof. Based on a presumption in favor of the State, the Court determined that a hanging is by nature a violent death when compared with an ordinary one. Moreover, the Court refused to infer government responsibility for Gangaram's death merely from the fact that the victim was illegally detained.

In a dissenting opinion, three of the judges argued that the State did have an affirmative obligation to protect the life of the victim, especially because of his illegal detention. Indeed, they deemed the right to life as implying not only a duty upon the state to prevent the deprivation of life, but also the obligation to take all the appropriate means to protect and preserve life, regardless of whether the person threatened is detained or not.

This *Gangaram-Panday* decision is particularly noteworthy in that the Court demanded a higher standard of proof than that required in previous cases. To

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the extent that this standard becomes established, the Commission may find itself in a difficult position. In the majority of cases considered by the Commission, evidence is generally in the hands of the government. Therefore,

reaching the burden of proof required by the Court could prove very difficult. Professor Grossman strongly criticized the Court's decision. He asserted that the burden of proof required by the Court was "impossible to satisfy," particularly as victims' families typically do not have

access to the victims' bodies. ☉

*Claudia Martin is a Fellow at the Inter-American Commission on Human Rights and will complete the LL.M. program at WCL in May of 1994. Françoise Roth is a Legal Associate at the International Human Rights Law Group and a graduate of the WCL LL.M. program.*

## Grossman Criticizes Recent Court Decisions Involving Suriname

by Claudia Martin and Françoise Roth

**P**rofessor Claudio Grossman, a co-director of the Center for Human Rights and Humanitarian Law, was the lawyer for the victims in both cases against the Suriname government. He represented the victims on behalf of the center and the International Human Rights Law Group. Grossman gave us his own impressions on the two decisions.

**Q:** Why did the center decide to take these cases over?

**A:** There were different reasons. First, I speak Dutch and I knew the human rights situation in Suriname as well as the victims. On the other hand, the case of *Aloboetoe* was challenging because it raised the interesting questions of cultural diversity and the rights of the indigenous populations.

**Q:** What is your opinion of the decision rendered in the *Aloboetoe et al.* case?

**A:** The fact that the Court recognized the responsibility of Suriname is significant because the Bushnegroes [Maroons] are considered second-class citizens there. It was important for civil society to be confronted with them. The decision gave them some rights. The Court awarded nonmonetary damages as well as \$500,000 as material compensation which will alleviate their economic situation. However, the Court was shy in not recognizing moral damages for the tribe as a whole. I think that it reflects a lack of sensitivity for the group's rights. The Court should also have ordered Suriname to investigate the killings and to punish those found guilty. It is worth noting that under the American Convention, Suriname still has the obligation to investigate this human rights violations.

As to the legal expenses, the Court made a serious mistake in not awarding them. I acted as a pro bono attorney and all the expenses were paid by my law school and the Law Group. This decision

created problems for the victims. But we will continue to litigate this matter in the future.

**Q:** What are your observations of the decision in the *Gangaram-Panday* case?

**A:** As you know, the Court did not establish the responsibility of Suriname in the death of Mr. Gangaram-Panday. I believe this decision will create not precedent, but reaction. The Court should require reasonable standards of proof such as circumstantial evidence; otherwise, it will be difficult to prove any human right violations in the future.

**Q:** So, do you think the Court required a higher standards of proof?

**A:** Actually, the Court asked the victims to prove the impossible. It requested them to demonstrate that Asok Gangaram Panday did not hang himself; however, the family [did] not have access to his body until four days later. Therefore, the evidence was not in their hands. I believe the *onus probandi* should have been on the government to demonstrate that he committed suicide.

On the other hand, the doctors who made the autopsies and a government witness, testified in cross-examination that there was blood in the victim's testicles as a result of a blow applied shortly before the victim's death. I think that if you considered the circumstances of Gangaram Panday's illegal detention and subsequent death, it is very likely that he was subjected to torture.

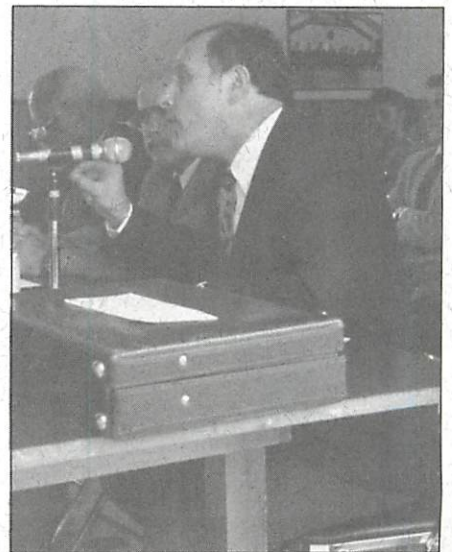
**Q:** What could happen if the approach in *Gangaram-Panday* becomes a general trend? In other words, how can the Commission reach the standard of evidence required in cases in which the proof is in the hands of the government?

**A:** We hope that it will not become a general trend. Moreover, as you know, the decision was a divided one. In fact, three judges support a different position as to

the responsibility of Suriname in the victim's death.

**Q:** Will your election as a member of the Inter-American Commission affect the Center's participation in other cases before the Court?

**A:** I believe the Center and the International Human Rights Clinic must be involved in new cases. However, I will not participate in the decisions of those before the Inter-American Commission because there is a conflict of interest. I think that the fact that I am a member of the Commission can benefit the students at WCL in many ways. Among others, I am in charge of a project concerning women's issues and I will need the assistance of some students. Furthermore, in the Commission, I want to support my decisions with universal precedents; therefore, I will need the assistance of students to prepare some comparative studies. ☉



Claudio Grossman arguing a case before the Inter-American Court of Human Rights in Costa Rica.