

NEWS FROM THE INTER-AMERICAN SYSTEM

by William Clark Harrell

Inter-American Commission on Human Rights

On October 17, 1997, the Inter-American Commission on Human Rights concluded its 97th Ordinary Session of Hearings. On the Commission sat Ambassador John Donaldson, President; Dr. Carlos M. Ayala Carao, First Vice-President; WCL Professor Robert Goldman, Second Vice-President; Ambassador Alvaro Tirado Mejia; Dr. Oscar Lujan Fappiano; and WCL Dean Claudio Grossman. Dr. Jean Joseph Exume could not attend due to critical injuries suffered during an attempt against his life in July 1997 in Haiti.

During its 97th Period of Sessions, the Commission presided over 70 Oral Hearings. Recognizing the fundamental, hemispheric importance of the right to free expression in securing democratic processes as well as the enjoyment of other rights, the Commission created a Rapporteur on Free Expression whose mandate will be defined in the next Ordinary Session.

During this Period, the Commission also established a Special Commission to initiate a general evaluation of its regulations with a view to reform. The Commission adopted some changes this session. Regarding a request for precautionary measures under Article 29 of the Regulations, the Commission will, in the future, exercise this capacity within a time frame of six months. Previously there was no time frame and Precautionary Measures would exist on the books indefinitely. During the designated time, the Commission will ask the Government for periodic reports. The Commission will also begin to produce press releases regarding the matters which give rise to the issue of Precautionary Measures. Finally, letter H of Regulation Article 63 was altered to give a Government, that is the subject of a country conditions report in the annual report of the Commission, one month to respond to the text of the report prior to its official release. This change came as a result of the debate on reform, described in the Spring 1997 issue of *The Brief*.

The Commission approved the plans for three on-site visits. In October, the

Commission will go to Ottawa, Toronto, and Montréal, Canada to observe the living conditions of refugees and the services offered to them by the state. In December, the Commission will visit Colombia to observe the human rights situation. The Commission approved the invitation by the Guatemalan government to carry out an on-site visit and will do so next year.

The Commission considered the Report from the on-site visit to Bolivia which occurred in April 1997. The Report was discussed by the Commission on July 8, and observations and recommendations were forwarded to the Government on July 29, 1997. The Government of Bolivia has accepted the Report and Recommendations and the Commission will monitor compliance. Similarly, the Commission considered the results from their on-site visit to the Dominican Republic from June 16 through 20, 1997, and approved an initial scheme for a Special Report which is now in progress.

The Commission approved the publication of its Report on the human rights situation in Brazil. This is the first report on Brazil reflecting the on-site visit in December 1995 and subsequent reports. It will be published in November 1997. A Report regarding the human rights situation in Ecuador was released in July 1997 and is available at the Commission. A draft of a Special Report on Prisons was presented to and studied by the Commission during this Session and a final document will be prepared for the next Regular Session in February 1998. The Special Rapporteur on Migrant Workers presented preliminary findings from a continental study and a scheme for a Special Report was discussed. That Report could be released next year.

The Special Rapporteur on Women's Rights, Dean Claudio Grossman of WCL, reported on the Women's Rights project. To date, 13 member states have responded to a questionnaire on women's rights distributed by the Commission. The non-reporting states have received a follow-up request to do so. To consider future options related to the project, the Commission convoked a meeting of experts on November 6 and 7 of this year.

Regarding individual cases, the Commission approved 29 Reports from different countries. These were released in early November 1997. Two Friendly Set-

tlements which arose from this Period are as follows:

1. *Paulo Christian Guardatti v. Argentina*

Facts: Mr. Guardatti was detained by the police from Province Mendoza, Argentina on May 23, 1992, and his whereabouts are still unknown.

Stage of Proceedings: Both parties availed themselves of friendly settlement negotiation under Article 49 of the Convention. The Argentine government agreed to establish an *ad hoc* investigative committee to determine the nature of the incident and release a report. The Commission will monitor its progress. The case was brought by the Center for Equal Justice in International Law (CEJIL) and the Argentine NGO, *Centro de Estudios Legales y Sociales* (CELS).

2. *Bolivar Franco Camacho Arboleda v. Ecuador*

Facts: Camacho was arrested on October 7, 1989, and remained in pre-trial detention until the Superior Court of Quito dismissed charges against him on January 24, 1995.

Stage of Proceedings: The Commission found the case admissible on March 12, 1997. Both sides of the litigation agreed to seek a friendly solution to the case. The Government agreed to acknowledge the violation, review the legislated pre-trial detention standards, and pay actual and moral damages. The case was brought by the Ecuadoran NGO, Ecumenical Human Rights Commission (CEDHU) and the National Lawyers Guild Vice President, William Harrell (a WCL LL.M. student).

The Inter-American Court of Human Rights

The Inter-American Court of Human Rights held its 37th Regular Session from September 6 through 25, 1997. During that session it considered Provisional Measures in certain cases, deliberated on decisions, and held public hearings in on-going proceedings. It also considered compliance in cases and in orders of Provisional Measures.

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1. *Loayza Tamayo v. Peru*

Facts: The case originated with events that occurred February 6, 1993, when Ms. Maria Elena Loayza Tamayo was allegedly illegally and arbitrarily deprived of her freedom, tortured, and treated in a cruel, inhuman, and degrading manner. She was processed under the special anti-terrorism legislation, which is separate from common criminal procedures. The application also alleges the violation of judicial guarantees and double jeopardy in relation to the same events.

Stage of Proceedings: The Court found a violation of Article 5 (inhumane treatment), Article 8 (fair trial), Article 7 (personal liberty), and Article 25 (judicial protection). The Court ordered Tamayo's immediate release (she was released October 16, 1997). The Court will now schedule a hearing to assess actual and moral damages. The case was brought by CEJIL, HRW/Americas, and the family of Tamayo.

2. *Castillo Paez v. Peru*

Facts: According to submissions to the Court, agents of the Peruvian National Police arrested Mr. Ernesto Castillo Paez on October 21, 1990. Since that time, his whereabouts have remained unknown.

Stage of Proceedings: A Merits Hearing was held and Petitioners await a decision from the Court. The case was brought by CEJIL, HRW/Americas and the Peruvian NGO, the Legal Defense Institute (IDL).

3. *Villagran Morales et. al. v. Guatemala (caso "Los Bosques de San Nicolas")*

Facts: According to submissions, in June 1990 agents of the Guatemalan State allegedly killed Anstrum Villagran Morales, and allegedly kidnapped, tortured, and killed Henry Giovanni Contreras, Federico Clemente Figueroa Tunchez, Julio Roberto Caal Cantoral, and Jovito Josue Juarez Cifuentes, all minors. The submissions also state that the Guatemalan state did not adequately respond to these actions. (note: This case was reported in the Spring 1997 issue of *The Brief*).

Stage of Proceedings: During its last session, the Court deliberated on the preliminary objections entered by the Guatemalan government based on lack of jurisdiction. The Court rejected this posture and will schedule a Hearing on the Merits. The case was brought by CEJIL and the Guatemalan NGO, *Casa Alianza*.

4. *Paniagua Morales et. al. v. Guatemala*

Facts: According to the complaint, the events that gave rise to this case occurred during 1987 and 1988 when agents of the Guatemalan Treasury Police allegedly kidnaped and murdered several civilians, including the petitioner. The case is generally referred to as the "white van case" due to the use of this type of vehicle as part of the *modus operandi*.

Stage of Proceedings: The case was submitted to the Court on January 19, 1995. On September 22, 23, and 24, 1997, the Court heard both petitioner's and government witnesses' testimony in public hearings. The case was brought by CEJIL and HRW/Americas.

5. *Castillo Petruzzi v. Peru*

Facts: The application indicates that a tribunal "*sin rostro*" (with covered faces) of the Peruvian State condemned the Chilean citizens, Jaime Francisco Castillo Petruzzi, Maria Concepcion Pincheira Saez, Lautaro Enrique Mel-lado Saavedra, and Alejandro Astorga Valdes to life in prison for the crime of treason.

Stage of Proceedings: The Commission submitted the case to the Court on July 22, 1997, and the Court will set a Preliminary Objections Hearing. The case was brought by the Chilean NGOs *Fundación para Ayuda Social a las Iglesias Cristianas* (FASIC) and the Chilean Human Rights Commission. 🌐

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