

NEWS FROM THE INTER-AMERICAN SYSTEM

by Nicole L. Grimm*

On April 3, 1998, the Inter-American Commission on Human Rights (Commission) published its 1997 Annual Report. The report detailed the Commission's activities during 1997, including the results of its 95th, 96th, and 97th sessions. It also contained information about certain important activities conducted in 1998, including a preliminary decision in the *de Sierra* case, *infra*. The General Assembly of the Organization of American States (OAS) adopted the Report in June 1997.

During the 95th session, which took place between February 24 and March 3, 1997, the Commission identified certain human rights issues that it wished to study closely and bring to the attention of the General Assembly. The first of these issues was governments that have come to power through means other than free and fair popular elections. The second issue was laws that limit the free exercise of human rights recognized in the American Convention on Human Rights (American Convention) and the American Declaration on the Rights and Duties of Man (American Declaration) based on claims of exception, such as states of emergency. Third, the Commission focused on countries in which proof existed of massive and grave violations of internationally recognized human rights. Finally, the Commission examined countries that were in transition with respect to the three previously-mentioned situations.

During this session, the Commission also approved the American Declaration on the Human Rights of Indigenous Peoples. In doing so, it took into account the testimony of and consultations with governments, indigenous organizations, and human rights organizations. Additionally, the Commission considered ongoing reports in the areas of prison conditions, migrant workers and their families, and women's rights.

Also in this session, the Commission agreed to make an *in loco* visit to Bolivia, at the Bolivian government's behest. This trip took place between April 26 and May 2, 1997. The government's purpose in soliciting the visit was to gain more information about miners whom members of the Bolivian armed forces allegedly killed in the regions of Capasirca, Llallagua, and Amayapampa in December 1996.

The 96th session took place between April 21 and April 25, 1997. Among other activities, Ambassador Brian Dickson of Canada requested an *in loco* visit by the Commission to observe the procedures

that apply to refugees seeking to enter Canada. The Commission accepted this request.

The 97th session occurred between September 29 and October 17, 1997. In addition to other events, the Commission agreed to create a special rapporteur on freedom of expression. It also approved preparations for an *in loco* visit to Colombia in order to directly monitor that country's human rights situation, which many observers regard as the worst in the hemisphere. This visit took place between December 1 and December 8, 1997, and a report of the visit is expected in fall 1998.

Throughout 1997, the Inter-American Court on Human Rights worked with the Commission. The two bodies discussed ways to improve Inter-American human rights procedures and examined several issues in detail, including admissibility procedures, verification of precautionary measures, evidentiary procedures, and confidentiality issues. Additionally, the Commission collaborated on several activities with African states, including an ongoing exchange program with the African Commission on Human and Peoples' Rights. The Commission also participated in the "African Human Rights Camp," which taught African judges and lawyers about the Inter-American Human Rights System. Finally, the Commission continued to work with the armed forces of OAS member states during 1997 to establish a culture of respect for human rights in military organizations.

The Commission released, *inter alia*, reports on the following individual matters:

Juan Carlos Abella (Argentina)

Facts: Petitioner Abella was one of 49 petitioners in this case. On January 23, 1989, an armed group attacked and gained control of a military barracks located in the province of Buenos Aires. A 30-hour battle ensued between the armed group and approximately 3,500 members of the Argentine security forces, that resulted in the deaths of several security force members and 19 of the attackers. After the battle ended, state agents captured a number of persons who allegedly participated in the attack. During their captivity, many of them were tortured and several either "disappeared" or were extrajudicially executed. Several others were convicted and sentenced to jail sentences that ranged from ten years to life under a criminal statute called the "Defense of Democracy" law. This law specifically applies to violent acts directed against democracy and the Argentine constitutional order, and it

severely limits defendants' abilities to appeal their sentences.

Conclusions: Consulting the Geneva Conventions to interpret the American Convention, the Commission determined that the 19 armed attackers killed during the battle died under conditions of internal armed combat. It also found that the evidence did not indicate that Argentina used illegal methods of combat during the battle. As a result, the state did not violate the human rights of these 19 people. Argentina did, however, violate the right to life (Article 4) of nine petitioners by "disappearing" four and extrajudicially executing five of them. Argentina also violated the right to physical integrity (Article 5.2) and the right to appeal judgments to a higher court (Article 8.2.h) of 20 petitioners by sentencing and imprisoning them under the "Defense of Democracy" law. Finally, Argentina violated the right to simple and prompt recourse (Article 25.1) of all 29 of the "disappeared," executed, and imprisoned petitioners by failing to diligently investigate the alleged events after they took place.

Recommendations: Argentina should make an independent, complete, and impartial investigation of the events on January 23, 1989. Furthermore, Argentina should analyze the results of this investigation in order to identify and punish the individuals who were responsible for human rights violations during the incident. Argentina should also take the necessary steps to ensure that proper appellate recourse is available for defendants convicted under the "Defense of Democracy" law. Finally, Argentina should make reparations to the victims of human rights violations and their families.

Gustavo Carranza (Argentina)

Facts: An order of the former military government removed Petitioner Carranza from his position as a lower court magistrate in 1976. In 1986, an Argentine court declared Carranza's case non-justiciable. Its decision stated that the courts are not competent to judge the justice, prudence, or efficiency of the procedures for removing this magistrate because these procedures are of an inherently political nature. The Argentine Supreme Court upheld the lower court's decision in 1987.

Conclusion: The Commission determined that Argentina's failure to make a decision based on the merits of Carranza's case violated his rights to a fair trial (Article 8) and to judicial protection (Article 25) under the American Convention.

Recommendations: Argentina should compensate Carranza for violations of his human rights.

Tarcisio Medina Charry (Colombia)

Facts: The Colombian Commission of Jurists brought this petition before the Commission on behalf of Medina Charry, a journalist for a Communist Party newspaper who "disappeared" on February 19, 1988, after Colombian state agents detained him. Witnesses who saw the victim at the moment of his detention heard police agents state that they were detaining him because of his affiliation with the paper. Although the government investigated various persons and charged some with minor offenses as a result of the Petitioner's allegations, Colombian penal procedures failed to punish anyone for the crime of causing the victim's "disappearance." Colombia did, however, make reparations to the victim's family in accordance with a recommendation by the Commission in an earlier report on this case.

Conclusions: The Commission found that Colombia violated Medina Charry's rights to a judicial personality (Article 3), life (Article 4), personal integrity (Article 5), personal liberty (Article 7), judicial guarantees (Article 8), freedom of expression (Article 13), and judicial protection (Article 25).

Recommendations: Colombia should conduct an impartial and effective investigation in order to determine who was responsible for human rights violations against the victim and determine what happened to him after his "disappearance." Colombia should also respect the victim's family's wishes during the

process of finding his remains and laying them to rest. Finally, Colombia should enact legislation that ensures the prevention of "disappearances," the protection of "disappeared" persons, and the adequate investigation of "disappearance" cases.

María Eugenia Morales de Sierra (Guatemala)

Facts: Petitioner de Sierra filed on behalf of herself and other Guatemalan women, complaining that the Guatemalan Civil Code gives different legal rights to married men and women. For example, within a marriage, the law gives the husband the right to act as the primary representative of the couple and to dispose of marital property. A married woman, in contrast, is only able to act as the couple's representative in certain limited circumstances. In addition, the law places on married women the responsibility to care for the home and children, and permits them to work outside the home only if such work does not interfere with their domestic duties. In 1995, de Sierra advised the Commission that the Guatemalan Constitutional Court found these provisions to be constitutional. The Commission examined the American Convention's concept of "victim" in deciding the claim's admissibility.

Conclusions: The Commission decided that it would admit the case, advise the parties of its decision, solicit their opinions about the possibility of initiating friendly settlement proceedings, and continue with its analysis of the issues presented by the parties.

Recommendations: The Commission has made no recommendations on the case at this time.

Severiano y Hermelindo Santiz Gómez "Ejido Morelia" (Mexico)

Facts: On January 6 or 7, 1994, Mexican army forces entered the indigenous community of Morelia, in the state of Chiapas. They forced the men of the village out of their houses and confined them in the church and basketball court, where they forced them to lay face down. While the men were detained, the soldiers ransacked the village houses and stores and destroyed the medical clinic. Soldiers separated three residents from the group of men, tortured them in the sacristy of the church, and ran over them with military vehicles. Their remains were found on a nearby road on February 11, 1994. Mexican criminal procedures failed to punish anyone for their deaths.

Conclusions: The Commission determined that Mexico violated the men's rights to life (Article 4), personal integrity (Article 5), personal liberty (Article 7), judicial guarantees (Article 8), and judicial protection (Article 25).

Recommendations: Mexico should appoint an independent prosecutor to perform a prompt, impartial, and effective investigation into the incident and use the investigation's results to apply criminal sanctions to individuals who were responsible. Mexico should also make reparations to the families of the victims. Finally, Mexico should introduce legislation that will ensure the rights to judicial guarantees and protection that are defined in Articles 8 and 25 of the American Convention. ☐

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The *Tahirih* Justice Center now has two full-time attorneys, who are currently working on approximately six cases. The center offers free legal services to immigrant women facing human rights abuses, and specializes in asylum cases that result from abuses such as female genital mutilation, rape, forced marriage, and sexual slavery. In addition, it provides additional non-legal services, such as a medical referral program in which physicians examine center clients at no cost and a social services referral program which runs a pen pal program for women in detention who are waiting for their cases to be heard. Recognizing the importance of corroborating the testimony of female refugees with the tes-

timony of cultural and anthropological experts, the center also operates an expert witness referral program.

Bashir obtained an associate position at Arnold & Porter in September

Bashir found herself frustrated by the limited resources available to women in similar situations in the D.C. area.

1997, where she is currently a member of the International Trade & Litigation Practice group. She does a substantial amount of work in the international trade field, as well as intellectual prop-

erty and international disputes. She also spends 15% to 30% of her time performing *pro bono* work, primarily through the *Tahirih* Justice Center. When not busy working for Arnold & Porter and the *Tahirih* Justice Center, Bashir keeps an extensive travel schedule, giving lectures on gender-based asylum issues and the state of immigration law. She is also currently a member of the Bahá'í National Committee for the Advancement of Women. ☐

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