

NEWS FROM THE INTER-AMERICAN SYSTEM

by Cathleen Caron*

The Inter-American Commission on Human Rights (Commission) met on four occasions during 1998. The Commission considered and approved the 1997 Annual Report, which was subsequently presented to the Organization of American States (OAS) General Assembly in June 1998. The Commission rendered 39 decisions and held 50 hearings to review cases, follow-up recommendations from previous reports, and review general human rights situations. Among other things, the Commission considered and approved the Special Report of the Special Rapporteur on the Rights of Women, which analyzes state legislation and practices in respect to obligations to women as stated in the American Convention on Human Rights and the American Declaration on the Rights and Duties of Man.

Developments in 1999

The Third Report on the Human Rights Situation in Colombia

On March 12, 1999, the Commission released the Third Report on the Human Rights Situation in Colombia (Report). The Report includes important advances in the analysis of the current Colombian human rights situation, including the application of international humanitarian law to all the parties of the internal armed conflict, and a thorough analysis of the internally displaced population.

In December 1996, during the 94th special session, the Commission decided to solicit the Colombian government's agreement to conduct an on-site visit to assess the human rights situation. In February 1997, Colombia's former president, Ernesto Samper Pizano, agreed to the on-site visit, which was conducted from December 1 through 8, 1997. The delegation consisted of Commission members John Donaldson, President; Carlos Ayala Corao, First Vice President; Robert Goldman, Second Vice President; and members Claudio Grossman, Oscar L. Fappiano, and Jean Joseph Exumé. The information gathered during this on-site visit led to the Commission's Report.

Violations of Human Rights and Humanitarian Law

The Colombian human rights crisis currently is one of the most complicated and serious in the Americas. Although the cause of the current internal conflict is a complex combination of historical events, the Report cites the formation of revolutionary groups in the 1960s as the most direct antecedent. Since the 1960s, the situation in Colombia has resulted in the massive and continued violation of fundamental human rights, such as the right to life and humane treatment. The Report detailed the role in the internal armed conflict of armed dissident groups, Colombian Military Forces, paramilitary organizations, and CONVIVIR, which consists of armed groups of civilians who serve as special guards and private security alongside the Colombian Military Forces. Additionally, the Report analyzes the applicability of international human rights and humanitarian law to each of the groups.

The Report found that humanitarian law is applicable to the internal armed conflict, principally because Colombia recognizes the existence of the internal armed conflict. Moreover, the State openly acknowledged the applicability of Common Article 3 of the four Geneva Conventions of 1949 and the Additional Protocol II of 1977, Relating to the Protection of Victims of Non-International Armed Conflicts. This acknowledgement allowed the Commission to directly assess violations of humanitarian law without first determining if the armed internal conflict rose to Protocol II's standards.

According to the Report, governmental and non-governmental organizations armed dissident groups, such as the Colombian Revolutionary Armed Forces (FARC) and National Liberation Army (ELN) recognized as parties to the conflict, and therefore are bound to humanitarian law standards. The Commission gathered evidence that the armed dissident groups commit numerous acts each year in violation of humanitarian law. These acts included the massacres of civilians; the use of car bombs and anti-personnel land mines; individual executions of civilians and combatants who are *hors de combat* (out of the fight or disabled); the arbitrary deprivation of liberty and the taking of hostages; torture; acts of perfidy; attacks on civilian objects; attacks on health services; forced displacement; recruitment of minors; and other indiscriminate acts such as the use of grenades and other explosives in a manner disproportionately hazardous to civilians. According to statistics compiled by various NGOs, including the Colombian Commission of Jurists, over the past several years armed dissident groups have been responsible for 26% to 38% of the "socio-political killings" outside of combat, where the perpetrator is known.

Colombian government agents, on the other hand, are held to both human rights law and humanitarian law due to their position as state actors. Although state actors are held to human rights standards at all times, humanitarian law applies only to the state actors directly involved in the armed conflict, such as the Colombian Military Forces and certain elements of the National Police Force. The Report scrutinized state actions under these legal constructs and concluded that state actors are responsible for numerous violations of both human rights and humanitarian law. These violations include the denial of right to life (civilian massacres, disproportionate and indiscriminate attacks resulting in civilian loss of life and damages to civilian objects, military roadblocks resulting in loss of life, and extrajudicial killings); forced disappearances; the denial of right to humane treatment; threats; food blockades; forced displacement; and recruitment of minors. The Report estimates that state actors are responsible for 10-15% of all "socio-political" deaths and disappearances outside of combat-related activities, where the perpetrator is known.

According to the Report, armed dissident groups, such as the Colombian Revolutionary Armed Forces (FARC) and National Liberation Army (ELN), are recognized by governmental and non-governmental organizations as parties to the conflict, and are therefore bound to humanitarian law standards.

Similarly, the Report concluded that paramilitary organizations, such as the United Colombian Self-Defense Organization, also may also be held to humanitarian and human rights laws. Humanitarian law applies to paramilitary groups' actions due to their increasingly direct role as parties to the armed conflict. Human rights laws apply as well when the organizations act effectively as state actors. The Report included an in-depth analysis of these connections and concluded that human rights law applies when

continued on next page

Colombian authorities direct, condone, or collaborate with paramilitary actions.

Applying both legal constructs, the Report concluded that paramilitary organizations violate international law through the massacre of civilians; extrajudicial killings; forced disappearances and arbitrary deprivation of liberty; torture; forced displacement of persons; attacks on health services; and the recruitment of minors. The Report attributed 60% of all "socio-political" deaths and disappearances outside of combat-related activities, where the perpetrator is known, to the paramilitary organizations.

Finally, the Report noted the ambiguous role CONVIVIR groups play in the Colombian armed conflict. The CONVIVIR groups are armed special guard and private security services created by decree on February 11, 1994, to aid the Colombian Military Forces. The Report estimates that there are now 414 CONVIVIR groups operating in Colombia. The Commission asserts that the Colombian military serves an important role in approving the creation of new groups and in the training and supervision of existing ones. According to the Report, this special relationship with the military renders the CONVIVIR state actors who are thus bound by human rights laws.

The applicability of humanitarian law is less clear. Although the CONVIVIR groups are civilian, the Report noted that its participation in acts of violence, including instances of direct participation in combat, connections to paramilitary activities, intelligence gathering, and cooperation with the Colombian military forces in counter-insurgency operations, blurs the groups' role in the conflict. The Commission noted with approval the recent decision taken by the president of the National Confederation of CONVIVIR to dismantle a majority of the groups. The Commission noted, however, that the legal regime for its existence is still in place.

Internally Displaced Population

Another important development noted in the Report is the analysis of Colombia's internally displaced population. According to statistics cited in the Report, an estimated 700,000 to 1,200,000 Colombians, mostly women, children, and indigenous peoples, are internally displaced primarily as a result of the armed conflict. The Commission contends that the main parties in the armed conflict use forced displacement as an integral part of their military strategy. When a civilian population is suspected of supporting the opposition, armed groups of dissident and government soldiers force the population to flee and then re-populate the areas with their supporters. The Colombian Episcopal Conference allocated responsibility for causing the internal displacement as follows: paramilitary operations, 33%; dissident organizations, 29%; State forces, 16%; others, 15%; and urban militias, 6%.

The Report stresses the gravity of the situation and that the State, although recognizing the crisis, has yet to address it adequately. In 1994, the Colombian government established the National Program of Integral Assistance for the Population Displaced by Violence (Program) to provide assistance to the internally displaced people and prevent the causes of displacement. The Program's success, however, has been limited due to lack of funds to adequately provide for the displaced population and the continued impunity of the armed forces that are displacing people.

The Commission noted that the State is obligated to seek assistance from the international community when it is unable to

provide for the protection of the displaced population. The Report observed that Colombia's collaboration with some international agencies, such as the United Nations High Commissioner for Human Rights (UNHCR), is a positive step and urged the State to continue seeking international support. Furthermore, the Commission recommended that Colombia observe the United Nations Guiding Principles on Internal Displacement, which is a compilation of applicable human rights and humanitarian law that focuses on internally displaced populations. In response, Colombia co-sponsored, along with more than 50 states, a UN Human Rights Commission resolution, which noted the Inter-Agency Standing Committee's decision welcoming the Guiding Principles. However, Colombia has not published widely the text of the Guiding Principles, as the Commission recommended.

The Third Report on the Human Rights Situation in Colombia can be found on the OAS website at www.cidh.oas.org.

Inter-American Commission Cases

Caso Herrera Jaime and Caso Mora Rubiano— Friendly Settlements (Colombia)

Facts (Caso Herrera Jaime): On July 22, 1995, the Colombian Commission of Jurists filed a petition with the Commission alleging that Colombia violated the right to life of Faride Herrera Jaime and Oscar Iván Andrade Salcedo under Article 4 of the American Convention on Human Rights (Convention), and the right to humane treatment of Juan Felipe Alvarez (Article 5). The petition alleged that on April 13, 1992, a Colombian army counter-insurgency patrol attacked Herrera Jaime's car with grenades and rifle fire, mistakenly believing it was operated by a guerrilla group. Herrera Jaime and Andrade Salcedo died as a result of the injuries and Alvarez and two others were injured. Ultimately, a military court acquitted the five members of the National Police implicated in the attack.

Facts (Caso Mora Rubiano): The "José Alvear Restrepo" Lawyers Collective, a non-profit group of human rights lawyers, filed a petition with the Commission on July 25, 1995, alleging that Colombia violated Roison Mora Rubiano's right to life (Article 4) and humane treatment (Article 5). While returning from work on June 22, 1993, Mora Rubiano and others were throwing rocks into the road when one struck the roof of a passing National Army Command vehicle. Several military personnel from the vehicle pursued and fired their guns at the youths. Mora Rubiano was shot and subsequently died from the injury. A military tribunal acquitted the two military personnel allegedly responsible for the event.

Conclusion: The parties in both cases reached friendly settlements with Colombia on May 27, 1998. According to the settlement terms, Colombia agreed to conduct a public act of reparation, establish a permanent remembrance of the victims, and study domestic mechanisms to improve victims' right to justice. On July 29, 1998, then-President Samper publicly acknowledged Colombia's responsibility in both cases, thereby satisfying the public reparation condition. On March 9, 1999, the Commission approved the friendly settlement and pledged to continue supervising the implementation of the remaining commitments.

Peru Withdraws from Inter-American Court's Jurisdiction

On July 5, 1999, the Council of Ministers of Peru decided to withdraw from the Inter-American Court's contentious jurisdiction, which Peru accepted through independent declaration on January 21, 1981. Contentious jurisdiction refers to the Court's binding authority over individual cases presented before it. With-

According to statistics cited in the Report, an estimated 700,000 to 1,200,000 Colombians, mostly women, children, and indigenous peoples, are internally displaced primarily as a result of the armed conflict.

drawal means, therefore, that the Court no longer has authority to adjudicate cases in which Peru is a party, pursuant to Article 62 of the Convention. The result is a *de facto* termination of Peru's acceptance of the Court's compulsory jurisdiction, which is the Court's binding authority over all matters relating to the interpretation of the Convention. On July 8, 1999, the Peruvian Congress passed Legislative Resolution no. 21752 in support of the Council's decision. That same day, Fernando de Trazegnies Grande, Peru's Minister of Foreign Relations deposited a unilateral declaration with the Secretary General of the Organization of American States (OAS) indicating Peru's immediate withdrawal from the Court's contentious jurisdiction. Peru's statement also declared that the withdrawal applied to all cases pending before the Court to which Peru had not yet answered. In a brief statement, Peru's President Alberto Fujimori simply stated that the decision was in Peru's interest.

The Court's decision on May 30, 1999, in the case of Castillo Petruzzi, appears to have influenced, in part, Peru's withdrawal. The Petruzzi case involved four Chilean citizens, who the Peruvian government alleged are members of the Tupac Amaru Revolutionary Movement. Peru's "faceless" military court, where the judges wear masks to conceal their identity, sentenced them to life imprisonment for the crime of "treason against the fatherland." The Court found that Peru violated the Convention's right to humane treatment (Article 5), judicial guarantees (Article 8), right of nationality (Article 20), and interpretation of norms (Article 29). The Court ordered Peru to retry the accused Chileans in a civilian court with requisite due process. Additionally, the Court ordered Peru to modify the terms for the "faceless" court's jurisdiction and reimburse the victims' relatives for legal costs. On June 11, 1999, Peru's Supreme Council on Military Justice ruled that the Court's decision could not be executed.

In 1999, the Commission referred the cases of Ivcher Bronstein and the Constitutional Tribunal to the Court. This action also may have influenced Peru's decision. On March 31, 1999, the Commission submitted a petition to the Court alleging that Peru deprived Bronstein, a naturalized Peruvian, of his citizenship rights when the government removed him as the President of Canal 2, a Peruvian television station. In addition, in a petition filed on July 2, 1999, the Commission asserted that Peru's dismissal of three Constitutional Tribunal justices, who declared unconstitutional a law allowing President Fujimori to seek another term, violated the Convention. Peru has not answered the applications in these proceedings. Furthermore, the individual cases of Cesti Hutado, Durand Ugarte, and Cantoral Benavides against Peru also are pending at various procedural stages before the Court.

On July 9, 1999, the Commission issued a press release characterizing Peru's notification of withdrawal as "profoundly deplorable" and called on Peru to reconsider its decision. According to the Commission, Peru's decision does not affect Peru's obligations to comply with the Court's previous resolutions, nor the Court's current jurisdiction over cases pending in the Inter-American system, such as the cases of Bronstein and the Constitutional Tribunal. Moreover, it noted that the withdrawal does not affect the Commission's jurisdiction or Peru's international human rights obligations. On September 27, 1999, the Court declared inadmissible Peru's immediate withdrawal from its contentious jurisdiction. It concluded that no norm in the Conven-

tion allows a state to withdraw acceptance of the compulsory jurisdiction. Furthermore, Peru's acceptance of jurisdiction on January 21, 1981, did not establish any limitation on the Court's competency such as reservations or time periods. Pursuant to the Convention's Article 29(a), no party may suppress or restrict the exercise of rights and freedoms recognized in the Convention. The Court considers Peru's withdrawal contrary to Article 29 (a) and therefore inadmissible. Consequently, the Court considered itself competent to hear the cases pending before it.

On July 5, 1999, the Council of Ministers of Peru decided to withdraw from the Inter-American Court's contentious jurisdiction, which Peru accepted through independent declaration on January 21, 1981.

Trinidad and Tobago denounce American Convention on Human Rights

In a letter dated May 26, 1998, Trinidad and Tobago notified the OAS Secretary General that it intended to denounce the American Convention on Human Rights and

withdraw from its competency. The letter described the ongoing discussion with the Commission about Trinidad and Tobago's implementation of mandatory death sentence for convicted murderers. The State had urged the Commission to expedite its procedures in reviewing pending Article 5 claims, the right to humane treatment, in order for Trinidad and Tobago to implement the death sentences in a timely fashion. The letter continued to note that the Commission would not alter its procedures to accommodate the request. Trinidad and Tobago, therefore, withdrew ratification of the Convention because the State already had sufficient due process safeguards to protect the rights of condemned prisoners. The Commission responded on May 28, 1998, calling the decision "unfortunate" and urged Trinidad and Tobago to reconsider its position. The Commission noted that Trinidad and Tobago is still subject to the Commission's jurisdiction, the OAS Charter, the American Declaration, and the Commission's statute. Pursuant to the Convention's Article 78, the denouncement became effective on May 26, 1999, one year from the date of notification.

The withdrawal raises questions about the Commission's competency over unresolved claims after May 26, 1999, the effective date of withdrawal. The most prominent case pending before the Commission concerns the case of Anthony Briggs. On August 29, 1998, the Court issued provisional measures on behalf of Anthony Briggs and seven other death row inmates to stay the inmates' executions pending the Court's resolution of Briggs's challenge to the State's due process protections in capital cases. Pursuant to Article 63(2), the Court may issue provisional measures to prevent irreparable harm to a victim with a claim under consideration. On May 25, 1999, the day before Trinidad and Tobago's denunciation of the Convention was to go into effect, the Court decided to maintain the provisional measures and extend them to 20 other death row inmates. Disregarding the provisional measures, Trinidad and Tobago executed Joey Ramiah, one of the 20 inmates, on June 4, 1999. Representatives of one of the executed prisoners notified the Court of the State's actions. Subsequently, the Court warned Trinidad and Tobago that the execution of Briggs, which was set for July 28, 1999, would be a direct contravention of the Court's binding provisional measures. The State executed Briggs, however, on his scheduled execution date. The Court is expected to issue a ruling during the 104th session, which opened on September 21, 1999, concerning the legality of Trinidad and Tobago's actions. ☉

*Cathleen Caron is a J.D. candidate at the Washington College of Law.