

NEWS FROM THE INTER-AMERICAN SYSTEM

by Cathleen Caron*

Inter-American Commission Cases

Caso Cesti-Hurtado (Peru)

Facts: The Inter-American Commission on Human Rights (Commission) submitted this case to the Inter-American Human Rights Court (Court) on January 9, 1998. The Commission alleged that a Peruvian military court prosecuted and convicted Gustavo Adolfo Cesti-Hurtado, disregarding the Specialized Public Law Court of Lima's final decision on a habeas corpus petition that ordered the military tribunal to cease the proceedings and respect his personal liberty. Cesti-Hurtado was incarcerated upon conclusion of the military prosecution.

Decision: On September 29, 1999, the Court released the decision on the merits. The Court unanimously found Peru to be in violation of provisions of the American Convention on Human Rights (American Convention), including rights to judicial protection (Article 25) and lawful arrest (Article 7.6), and ordered Peru to comply with the Specialized Public Law Court of Lima's order demanding his release. Additionally, the Court found Peru in violation of the right to liberty and security (Article 7.1), pre-established procedures for deprivation of liberty (Article 7.2), arbitrary arrest (Article 7.3), to a fair trial (Article 8.1), as well as the obligations to respect rights (Article 1.1) and domestic legal effects (Article 2), which calls on the state party to adjust domestic laws so that they comply with the rights guaranteed under the American Convention. The Court declared Peru's prosecution of Cesti-Hurtado incompatible with the American Convention and ordered the conviction annulled. Furthermore, the Court declared that Peru pay a fair indemnity to Cesti-Hurtado and reimburse him for expenses incurred during the prosecution. The case will now enter the reparations phase.

Reports

Caso Ignacio Ellacuría and others (El Salvador)

The Commission issued a report on December 22, 1999, concerning the November 16, 1989, extrajudicial executions of six Jesuit priests and two women. The initial petition submitted on the afternoon of the executions alleged that during the early morning hours on November 16, 1989, members of the El Salvador Armed Forces entered the Jesuits' residence in the Central American University (UCA) in San Salvador and summarily executed Father Ignacio Ellacuría, UCA's rector; Father Ignacio Martín Baró, UCA's vice-rector; Father Segundo Montes, director of UCA's Human Rights Institute; professors Armando López, Joaquín López y López, and Juan Ramón Moreno; Julia Elba Ramos, the cook; and Ramos's daughter, Celina Mariceth Ramos. The petition further alleged that the El Salvadoran authorities' subsequent investigation was ineffective because of its failure to investigate the "intellectual authors" of the crime—the persons who ordered the killings—despite considerable evidence implicating high level military officials. The only two military officials convicted for committing the crime were granted amnesty under El Salvador's 1993 General Amnesty Law.

After analysis of the case, the Commission concluded that El Salvador violated the right to life (Article 4), the rights to judicial guarantees and effective prosecution on behalf of the victims, the victims' family members, and members of the religious and academic communities (Articles 8.1, and 25), and the right to the truth (Articles 1.1, 8.1, 13, and 25). Additionally, El Salvador failed to fulfill its obligation "to respect rights" (Article

1.1) recognized in the American Convention without discrimination and to abstain from adopting internal laws contrary to the rights recognized in the American Convention (Article 2, "Domestic Legal Effects").

After finding the above violations, the Commission recommended that El Salvador conduct a complete, impartial, and effective investigation in accordance with international standards to identify, judge, and sentence all the responsible parties. The Commission also called for El Salvador to indemnify the affected parties and to adjust its internal laws to comply with the American Convention, which would include overturning the General Amnesty Law. On November 12, 1999, the Commission presented its findings to El Salvador. The Commission observed that El Salvador had not taken the necessary measures to comply with these recommendations. As a consequence, the Commission will continue evaluating the government's progress until it has fully complied with the recommendations.

Advisory Opinions

On October 1, 1999, the Court issued Advisory Opinion Number 16 concerning the right of foreign detainees facing the death penalty to be informed about their right to contact their country's consular authorities, and its relationship to due process guarantees. Pursuant to Article 64.1 of the American Convention, Mexico requested on December 9, 1997, that the Court provide answers to 12 questions concerning the legality of the lack of notification to the foreign inmates in relation to the Vienna Convention on Consular Relations (Vienna Convention), the International Covenant on Civil and Political Rights (ICCPR), the Organization of American States Charter (Charter), and the American Declaration on the Rights and Duties of Man.

The Court unanimously opined that Article 36 of the Vienna Convention, "Communications and Contact with Naturals of the Sending State," recognizes the individual rights of foreign inmates, including the right to information about consular services, with corresponding obligations on the receiving state. The rights guaranteed in Article 36 are not contingent upon the sending state issuing a complaint but are considered to be automatic. The Court further noted that Article 36 applies to all foreign nationals of a sending state and is part of recognized international human rights law. The Court interpreted Article 36(1)(b) to require the receiving state to inform the foreign inmate about consular services before he or she makes a statement before the authorities. Furthermore, the ICCPR's due process guarantees (Article 14) may only be realized, in specific circumstances, by fulfilling the obligations under Article 36(1)(b) of the Vienna Convention. For example, a foreign inmate may need assistance from his or her consular services in order to understand and realize his or her full due process rights.

In relation to the ICCPR, the Court observed that Article 2 (ensuring that the state will respect the rights recognized in the ICCPR in a nondiscriminatory manner), Article 6 (right to life), Article 14 (right to due process), and Article 50 (noting that the ICCPR extends to all parts of federal states) apply to human rights in the American states.

By a vote of six to one, the Court further noted that a state that fails to provide a foreign individual in its custody with information about consular services affects due process guarantees. Completion of a death sentence under these circumstances is a violation of the right to not be deprived

arbitrarily of life, as defined in the Article 4 of the American Convention and Article 6 of the ICCPR. A state having violated these articles is obligated to pay reparations.

Case Updates

Caso del Carazco (previously known as Caso Aguilera La Rosa)

On November 12, 1999, the Court issued a press release concerning the developments in this case. The Commission filed a petition with the Court on June 7, 1999, alleging that the state of Venezuela violated the American Convention's right to life (Article 4.1), to humane treatment (Article 5), to personal liberty (Article 7), to judicial guarantees (Article 8.1), to judicial protection (Articles 25.1 and 25.2(a)), and to suspension of guarantees (Article 27.3) in accordance with the obligations to respect rights (Article 1.1) and domestic legal effects (Article 2). The allegations relate to events occurring in Caracas, Venezuela, in February and March 1989, when state agents extrajudicially executed 35 people, disappeared 2 people, and injured 3 other people. On November 10, 1999, Venezuela publicly acknowledged the truth of the allegations during a session of the Court and accepted the judicial consequences and its international responsibility. Reparations in this case are now pending.

Caso Castillo Petruzzi and Caso Loayza Tamayo (Peru)

The Court issued two press releases on November 17, 1999, concerning Peru's refusal to abide by the Court's decision of June 11, 1999, in the *Castillo Petruzzi* case and its opinion of

November 27, 1998, in the *Loayza Tamayo* case. On June 11, 1999, Peru's Plenary Court of the Supreme Council of Military Justice declared that it would not enforce the Court's decision in the *Castillo Petruzzi* case because the judgment "lacks impartiality and infringes upon the Political Constitution of the State." Additionally, Peru's Second Transitional Penal Chamber of the Supreme Court refused to execute the Court's decision regarding reparations in the *Loayza Tamayo* case. Peru claimed that the Court did not have proper jurisdiction to render judgment because the petitioners had failed to exhaust internal remedies.

The Court concluded, however, that Peru has no legal justification for non-compliance with the decisions. Pursuant to Article 67 of the American Convention, which concerns the Court's procedures, a Court judgment is final and not subject to appeal. If there is a disagreement, however, as to the meaning or scope of the decision, Article 67 also allows a party to request that the Court interpret the decision. In the *Loayza Tamayo* case, Peru requested an interpretation of the decision in accordance with Article 67 and the Court issued its interpretation on June 3, 1999. According to Article 68.1, parties to the American Convention must comply with the final decisions rendered by the Court. Furthermore, the Court noted that Article 27 of the Vienna Convention on the Law of Treaties of 1969 prohibits parties from invoking internal law to justify non-compliance with treaty obligations. The Court called for Peru's prompt compliance with its judgments. ☹

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to their homes of origin," as well as a "right to have restored to them the property of which they were deprived in the course of hostilities." In cases where property could not be restored to returnees, the Dayton Accords provided that returnees have a right to compensation instead. Additionally, the UN Security Council, the UN Commission on Human Rights, and the UN Committee on the Elimination of All Forms of Racial Discrimination issued statements supporting the rights of refugees and displaced persons in the Bosnian conflict to return to the homes that they occupied prior to the armed conflict. The post-conflict agreements in Guatemala and Bosnia are examples of international norms that favor the land rights of returnees. Again, the practice of these two countries, and the international organizations that supported them, suggest the emergence of customary international law to protect the land tenure rights of returnees.

Conclusion

Although Mozambique's implementation of the July 1997 Land Law generally serves as a model example of compliance with international legal protections for returning refugees and displaced persons, some land tenure problems for Mozambican returnees still persist. Despite the advances in the law to promote returnees' interests, it continues to be difficult for peasants to enforce their rights in the midst of competing large landholders and outside investors. Additionally, there are conflicts over which small landholders should use the limited amount of fertile land available to peasants. In the spring of 1999, the Land Tenure Center reported that land access was still linked to wealth-related factors. Cases of fraudulent land expropriation still continued after implementation of the new land law, further disrupting peasants' access to lands.

Another problem concerns conflicts among small landholders themselves. The Land Tenure Center observed that, although the July 1997 Land Law did much to protect the interests of small landholders against the competing interests of large landholders, it did not contain enough provisions that addressed existing competing land claims among peasants. This is a sensitive area, particularly in light of the policy desires to resolve land conflicts at the local level with customary authorities.

Furthermore, other problems at the local level still exist. Although the Land Commission provided that the July 1997 Land Law would be translated into local languages to help local people access it, NGOs are still trying to inform peasants of their rights under the new law. It also has been difficult to maintain a balance between the active role of customary authorities and the new standards of accountability developed by the new land law to legitimize local processes. In addition, enforcing the land rights of women still remains challenging due to the history of discrimination against women who, in customary practices, lacked land use, development, and inheritance rights.

Despite these concerns, the changes implemented by the July 1997 Land Law have been mostly positive. Mozambican government agencies, international organizations, local NGOs, and researchers continue to work through the remaining problems returnees and other peasants face today. Mozambique's efforts to resolve post-war land tenure conflicts reflect a compliance with international standards and demonstrate methods for improving land tenure policies for returning refugees and displaced persons in other countries around the world. ☹

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