

CASES BEFORE THE INTER-AMERICAN COMMISSION FOR HUMAN RIGHTS

In 1999, at least three cases that EAAF investigated in the past came under consideration by the Inter-American Commission, a branch of the Organization of American States (OAS). These include the Brazilian case of the "Guerrilla de Araguaia" (1994-95); the case of the Palace of Justice in Bogotá, Colombia (1996-97); and the case of Dos RRs, in Guatemala (1994-95).

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THE INTER-AMERICAN SYSTEM

BACKGROUND

The Inter-American System for the protection of human rights was created as a mechanism for improving human rights protection in OAS member States. It rests on a dual legal basis: the Charter of the OAS, adopted in 1949 and effective since 1951; and the more comprehensive American Convention on Human Rights, adopted in 1969, which is binding over most - though not all - member countries since 1978. The OAS's definition of Human Rights began with the 1949 American Declaration of the Rights and Duties of Man:

"A subsidiary element in the system's legal basis is the American Declaration of the Rights and Duties of Man. While this has been adopted as a non-binding instrument, it has acquired some legal status as the definition of human rights to which

the OAS Charter referred and, through general acceptance, as part of customary international law."¹

While the Declaration was non-binding, later documents built on its concepts. The newer American Convention is a binding document by design, and is considered a milestone in the evolution of international law.

Two bodies carry out the functions of the Inter-American System: the Inter-American Commission on Human Rights (IACHR), and the Inter-American Court of Human Rights. Based in Washington, D.C., the Commission was established in 1959. Its seven members are elected by the OAS General Assembly and do not represent any particular country. It conducts on-site visits to and reports on the human rights situations in different countries, makes policy recommendations to the OAS General Assembly, and has sometimes been able to pressure governments by drawing international attention to excesses. It receives and processes petitions which allege human rights violations, may carry out investigations of these cases, and when necessary, brings cases against member states to the Inter-American Court on behalf of petitioners.

The Inter-American Court of Human Rights was established in 1978 to apply and interpret the American Convention on Human Rights. Located in San Jose, Costa Rica, it acts as a court of last resort for victims of human rights violations who are denied justice in their home countries.

The Court is composed of seven judges who, like the members of the Commission, are nationals of

¹ "The Legal Basis for the Inter-American Human Rights System", in *Transitional Judicial Review* L6265X, Fall 1994, Prof. Alejandro Garro.

OAS member states elected to serve in an individual capacity. The Court has two types of jurisdiction - contentious and advisory. The advisory jurisdiction of the Court is outlined in the American Convention, which indicates that member States or any OAS organ, including the Commission, may consult the Court regarding the interpretation of the American Convention or other treaties concerning human rights in the American States.

The Court's contentious jurisdiction is limited to those states that have fully ratified the American Convention. These States have declared that they recognize the jurisdiction of the Court as binding *ipso facto*, and not requiring any subsequent special agreement. Twenty-five of the OAS's thirty-five Member States had ratified the American Convention as of 1997, a notable exception being the United States: the US signed the Convention initially, and President Carter forwarded it the Senate for consent to ratification, but the Senate did not act on this request.²

PROCESS

Most cases are never sent to the Court, but are resolved at the level of the Inter-American Commission. For the Inter-American Commission to open a case, it must receive a petition that demonstrates one of the following: that a violation was committed by the agents of a member state, that the violation was perpetuated by the State's failure to prevent it, or that the State failed to carry out an adequate follow-up - e.g., sanctioning responsible parties or compensating the victims. Petitions must also show that the victim has exhausted all means of remedying the situation domestically.

If the Commission decides that the case is admissible, it makes a formal request for information to the allegedly offending state, and must furnish that state with a transcript of the petitioners' claims. The Commission, the State, and the petitioners then enter into a complex exchange

of documents, over the course of which they attempt to reach a friendly settlement. The Commission appeals to the rules of the American Convention if the state is among those that ratified the Convention. If not, it appeals to the more general terms of the American Declaration of the Rights and Duties of Man. If necessary, the Commission will carry out further investigation into the case. If an agreement is not reached via the usual procedures, the Commission issues a report with recommendations to the General Assembly. At this point, any member state has the right to attach an opinion.

Cases may only be presented to the Inter-American Court by a state that is party to the American Convention, or by the Inter-American Commission itself, and only after all of the Commission's procedures for dealing with the case have been completed. The Commission may request that the Court adopt specific precautionary measures to avoid serious harm to human rights in urgent cases.

If the Court finds that the State accused of a violation is guilty, it has the authority and is mandated to declare that a rights violation has occurred, and is given the power to order the taking of remedial measures by the guilty State. It can rule, for instance, that the consequences of the situation in question be remedied and that fair compensation be paid to the injured party. Such judgments are not subject to appeal, and are binding for states party to the American Convention.

The Court's judgment is enforced by the OAS General Assembly, to which the Court makes an annual report. In this report, it specifies the cases in which a State has not complied with its judgments and makes pertinent recommendations. Another potential action is the delivery of a temporary injunction regarding a pending case or one that has not yet been submitted to the Court, but which is presented by the Commission. This includes cases of extreme gravity and urgency and those in which such action is required to prevent irreparable damage to persons.

² "The Inter-American System for the Protection of Human Rights", by Thomas Burgenthal, 1981, *Anuario Juridico Interamericano*.

 SPECIFIC CASES

EAAF's findings in investigations in Brazil, Colombia, and Guatemala have recently been used in cases before the Inter-American Commission. Each of these cases is being presented by CEJIL - the Center for Justice and International Law - as co-petitioners in conjunction with local organizations. The Brazilian case of the Guerrilla de Araguaia, and case of the Palacio de Justicia in Bogota, Colombia, are currently pending final decisions. The case of Dos RRs in Guatemala has reached a friendly settlement agreement. These last three cases are described below.

Cases for which EAAF has contributed forensic information to the Commission include also that of the 1989 US Invasion of Panama, the Case of La Tablada, Argentina, and case of El Mozote, in El Salvador.

 BRAZIL

This case is concerned with events that took place between 1972 and 1975 in the northern state of Pará. A faction within the Brazilian Communist Party (PC do B) had established a base in Pará's remote, jungled Araguaia region in the 1960's to challenge Brazil's military dictatorship (1964-1985). The PC do B began to target the large rural estates - fazendas - in the early 1970's. With the construction of the Trans-Amazon highway, the Brazilian Army entered the region. Both sides lost many lives in the ensuing conflict.

EAAF's investigation concerned the fates of approximately sixty individuals, associated with the guerrilla movement, who were 'disappeared' by the Army during this period. At the request of the Brazilian Commission of Relatives of 'disappeared' Persons, EAAF members traveled to Araguaia in 1996 excavate sites in which the Army was alleged to have buried guerrilla members (Please see EAAF's 1996-97 Biannual Report).

The organizations CEJIL, Grupo Tortura Nunca Mais-Rio de Janeiro, Comissão de Familiares de Mortos y Desaparecidos Politicos-São Paulo, and Human Rights Watch-America co-petitioned the Inter-American Commission, which on December 12, 1995 agreed to review it as Case #1155.2. Brazil's democratic government has defended its amnesty law, and claims that it has taken all steps to find and identify the remains of victims. The commission is expected to give a final report on the case during 2000.

 COLOMBIA

The case of Bogotá's Palacio de Justicia is also awaiting a decision. The case concerns the outcome of a 1985 clash between the M-19 guerrilla movement and the government. On November 6 of that year, M-19 captured the Palace of Justice in downtown Bogotá, taken many hostages, including Supreme Court Justices. In the ensuing battle with the army, many guerrillas and hostages lost their lives. According to witnesses, others were captured by the army and 'disappeared' in the aftermath of the battle. The army made little attempt to account for the victims, and a disputed number of bodies remained missing and unidentified.

At the request of the Colombian Attorney General's office, with the support of the UN, and in collaboration with local human rights organizations, EAAF served as consultants in the excavation and analysis of presumed remains of persons deceased in connection with these events (See EAAF's 1996-97 Biannual Report).

Co-petitioners CEJIL and La Corporacion del Colectivo de Abogados de Bogotá presented the case to the Inter-American Commission on January 17, 2000. It was dubbed Case #100.738, and the Commission duly requested information of the Colombia government, which has given an initial response. The case is presently awaiting a more complete response.

GUATEMALA

The Massacre at Dos RRs, which took place in Guatemala's Petén region in December 1982, is well known. The Guatemalan army accused local populations of collaborating with the guerrilla movement, and killed approximately 500 men, women and children. Bodies were disposed of in the village well and in surrounding woods. Twelve years later, at the invitation of FAMDEGUA, a local human rights organization, and the Archbishopric of Guatemala, EAAF began a forensic investigation at the sites, recovering the remains of at least 171 persons, overwhelmingly of children (Please see EAAF's 1994-95 Biannual Report).

The Guatemalan government signed a friendly settlement agreement with the Inter-American Commission in March 2000. By doing so, the government publicly accepted responsibility for this and another massacre, and 16 individual disappearances and executions, and agreed to take every step necessary to seek justice, including offering protection to witnesses. The government also agreed to appoint a Verification Commission, to which it will grant the resources for locating other mass graves, for identifying remains, and for identifying surviving family members, who will receive monetary compensation. A documentary on the massacre of Dos RRs will be aired on Guatemalan television and broadcast over national radio. Amnesty International welcomed the accord. However, it pointed out that 'the limited number of cases on which agreement has been reached must be placed in the context of the overall number of abuses which occurred, recalling that the UN-sponsored Historical Clarification Commission (CEH) established that over 600 large scale massacres occurred during the years of the conflict, and that some 200,000 people were victims of either disappearances or extrajudicial executions. "The government must now deliver on this new promise, not merely to acknowledge the abuses and pay some compensation, but to bring those responsible to justice." Amnesty said.³

There are currently legal suits filed both in Guatemala and abroad against officials allegedly responsible for gross human rights abuses in the late 1970s and early 1980s. These include members of current President Portillo's own political party, such as General E. Ríos Montt, who ruled Guatemala between March 1982 and August 1983.

In the case of Dos RRs, arrest warrants have been issued for a number of soldiers recently named by former fellow soldiers as having being involved in the massacre. Their lawyers have argued that they cannot be tried for this crime because they are covered by Guatemala's 1996 amnesty law. However, this law specifically states that those responsible for genocide cannot benefit from immunity. Considering that the majority of the victims of the Guatemalan conflict were indigenous people, the CEH concluded that a genocide had been committed at least in four areas of the country. The Constitutional Court is soon to rule on this issue.

In addition, the Dos RRs incident is included in a package of cases that have been submitted by the Rigoberta Menchú Foundation for consideration by the Judiciary of Spain.

³ Amnesty International; News Release, London Secretariat, August 10, 2000. News Service No. 154.