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## The Inter-American Human Rights System: Activities During 1999 through October 2000

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THE INTER-AMERICAN HUMAN RIGHTS  
SYSTEM:  
ACTIVITIES DURING 1999 THROUGH  
OCTOBER 2000

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JAN PERLIN\*\*

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## INTRODUCTION

The Inter-American human rights system continued to operate at vastly higher production levels during the past year, as it has in each of the preceding three years. An indication of the increase in decision-making at both the Inter-American Court of Human Rights (“the Court”) and the Inter-American Commission on Human Rights (“the Commission”) is the sheer size of their annual reports.<sup>1</sup> The annual reports of the Commission have grown from 911 pages in 1996,<sup>2</sup> to 1185 pages in 1997,<sup>3</sup> to three separate volumes in 1999 (note the Commission’s website, with the report in both English and Spanish),<sup>4</sup> and more of the same is expected in the 2000 report. The decisions of the Court included, as of the end of October, 2000, sixteen advisory opinions and decisions on the merits in forty-six contentious cases. Wide dissemination of the decisions remains a problem, however, as many of the decisions discussed herein are not widely available to

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1. For documents outlining the different roles and responsibilities of the Court and Commission, see *infra* note 5 and accompanying text.

2. 1996 ANN. REP. INTER-AM. COMMISSION ON HUM. RTS., available at <http://www.oas.org/> (last visited Oct. 14, 2000).

3. 1997 ANN. REP. INTER-AM. COMMISSION ON HUM. RTS., available at <http://www.oas.org/> (last visited Oct. 14, 2000).

4. 1999 ANN. REP. INTER-AM. COMMISSION ON HUM. RTS., available at <http://www.oas.org/> (last visited Oct. 14, 2000).

the public, even on the better and more frequently updated web sites for both the Court ([http://corteidh-oea.nu.or.cr/ci/HOME\\_ING.HTM](http://corteidh-oea.nu.or.cr/ci/HOME_ING.HTM)) and the Commission (<http://www.cidh.oas.org/>).

The Commission's web site includes a set of materials on the system fully updated through December 1999, entitled "Basic Documents Pertaining to Human Rights in the Inter-American System." These on-line materials include all of the relevant Inter-American treaties on human rights, the statutes and regulations of the Commission and the Court, most publications of the Commission and the Court, and a sample complaint. Practitioners should use these on-line materials instead of the often out-of-date paper versions of the "Basic Documents."<sup>5</sup> The web site also includes annual reports of the Commission through 1999. A significant document that is now available in English on the Court's web site, however, is the very important Advisory Opinion 16,<sup>6</sup> which concerns the application of the Vienna Convention on Consular Relations, particularly to foreign nationals on death row in the United States.<sup>7</sup>

One of the most important events occurring in the Inter-American

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5. The newest web and paper version of "Basic Documents" is dated January 2000, available at <http://www.cidh.oas.org/basic.htm> (both English and Spanish versions).

6. See Inter-American Court of Human Rights, *The Right to Information about Consular Assistance in the Frame of the Guaranties of Due Legal Process*, Advisory Opinion OC-16/99 (Oct. 1, 1999), available at [http://corteidh-oea.nu.or.cr/ci/PUBLICAC/SERIE\\_A/A\\_16\\_ESP.HTM](http://corteidh-oea.nu.or.cr/ci/PUBLICAC/SERIE_A/A_16_ESP.HTM) (last visited Oct. 23, 2000) [hereinafter Advisory Opinion OC-16/99] (analyzing the right of foreign nationals to receive information on consular access as a matter of due process of law).

7. See Vienna Convention on Consular Relations, Apr. 24, 1963, art. 55, 21 U.S.T. 77, 113, 596 U.N.T.S. 262, 308-10 (providing that consular officers must respect and not interfere with the law of the receiving state); see also Advisory Opinion OC-16/99, *supra* note 6, paras. 84, 87 (finding that the Vienna Convention on Consular Relations ("VCCR") concerns the protection of individual rights and that Article 36 of the Convention provides individual rights to consular communication and access). In particular, paragraph 84 reads: "The Court therefore concludes that Article 36 of the Vienna Convention on Consular Relations endows a detained foreign national with individual rights that are the counterpart to the host State's correlative duties." *Id.* para. 84. Paragraph 87 reads: "Therefore, the consular communication [referred to] in Article 36 of the Vienna Convention on Consular Relations does indeed concern the protection of the rights of a national of the sending State and may be of benefit to him." *Id.* para. 87.

human rights system in 1999 was the entry into force of a new treaty in the Americas, the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights ("Protocol of San Salvador"). The Protocol of San Salvador entered into force on November 16, 1999, with the ratification by Costa Rica, the eleventh state to ratify. The Protocol of San Salvador reflects much of the same substantive content as the International Covenant on Economic, Social and Cultural Rights.<sup>8</sup> Article 19.6 of the Protocol of San Salvador contains an interesting provision permitting enforcement by the Commission and the Court of the rights to trade unionization (Article 8.1(a)) and education (Article 13).

Without a doubt, the most important event in the Inter-American human rights system in the last year was Peru's unprecedented—and failed—attempt to withdraw from the Court's jurisdiction. This action followed Trinidad and Tobago's 1998 denunciation of the American Convention on Human Rights ("American Convention")<sup>9</sup> in response to the Court's attempts to impose provisional measures (a form of stay or injunction) on several death penalty cases.<sup>10</sup> Peru's action came after several stinging rebukes by the Court to the Peruvian government's attempts to control crimes charged as treason and terrorism.<sup>11</sup> The jurisprudence of the Court in the 1999 Peruvian cases provides a wide range of condemnations to that government's actions.

Accordingly, Parts I and II of this Article detail the most significant events and actions of the Court and the Commission, respectively, during 1999 through October 2000. Part III provides a list of

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8. See International Covenant on Economic, Social and Cultural Rights, G.A. Res. 2200, U.N. GAOR, 21st Sess., Annex, Supp. No. 16, at 49, U.N. Doc. A/6136 (1967).

9. American Convention on Human Rights, *opened for signature* Nov. 22, 1969, O.A.S. Official Records, OEA/Ser. K/XVI/1.1, doc. 65, Rev. 1, Corr. 2, 144 U.N.T.S. 123, 9 I.L.M. 673, 678 (1970) [hereinafter American Convention].

10. See Douglass Cassel, *Peru Withdraws from the Court: Will the Inter-American Human Rights System Meet the Challenge?*, 20 HUM. RTS. L.J. 167, 168-69 (1999) (postulating that Peru's real motive for withdrawing from the jurisdiction of the Court was to avoid being bound by any future decisions in two cases, *Ivcher Bronstein* and *Constitutional Court*).

11. See discussion *infra* Part I.A.

brief bibliographical references to new scholarship in the Inter-American human rights system in 1999-2000.

## I. ACTIONS OF THE INTER-AMERICAN COURT OF HUMAN RIGHTS

In 1998 and 1999, four additional countries accepted the jurisdiction of the Court, bringing the total number of countries subject to the Court's jurisdiction to twenty-one, including Peru and Trinidad and Tobago. The new signatories include Brazil and Mexico, the most populous countries in Latin America, as well as Haiti and the Dominican Republic. These recent additions evince overall confidence in the decision-making of the Organization of American States ("OAS") human rights bodies, despite the actions of Peru in 1999, and Trinidad and Tobago the year before, in attempting to withdraw from the Inter-American human rights system.

### A. THE PERUVIAN CASES AND PERU'S ATTEMPTED WITHDRAWAL FROM THE COURT'S JURISDICTION

The Court's decisions in the 1999 Peruvian cases provide a rationalization of Peru's frustration, however ill-founded, with the Court. The first of the decisions was the *Durand and Ugarte Case*,<sup>12</sup> which involved two individuals who were detained in February 1986 and charged with terrorism. The men were put into the notorious El Frontón jail on the island of San Juan Bautista, where a massive riot by prisoners, itself the subject of previous consideration by the Commission and the Court, occurred in June of that year. Their families, in an attempt to find out what had happened to the men, filed two separate petitions for habeas corpus. Neither petition was dealt with effectively by domestic judicial bodies, and the men were

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12. See *Durand and Ugarte Case*, Decision on Admissibility, May 28, 1999, Inter-Am. Ct. H.R. (Ser. C) No. 50 (1999), available at [http://corteidh-oea.nu.or.cr/ci/PUBLICAC/SERIE\\_C/C\\_50\\_ESP.HTM](http://corteidh-oea.nu.or.cr/ci/PUBLICAC/SERIE_C/C_50_ESP.HTM) (last visited Oct. 23, 2000) [hereinafter *Durand and Ugarte Case*] (noting that the *Durand and Ugarte Case* originated in the Commission in 1987 and was referred to the Court in 1996).

never found. A human rights complaint to the Commission followed. Subsequently, the Court found the case admissible, and it will now proceed to a decision on the merits. The potential legal consequences and political embarrassment to the Peruvian government contribute to its frustration.

The real firestorm, however, came two days after the *Durand and Ugarte Case* decision, when the Court decided the *Castillo Petruzzi Case*.<sup>13</sup> In that case, the Court found improper the conviction for treason of four Chilean members of the *Tupac Amaru* guerrilla movement who had been captured in Peru. The decision reiterated the rebukes of the Peruvian government for its anti-terrorism campaign, received in the 1997 *Loayza Tomayo Case*.<sup>14</sup> In the *Loayza Tamayo Case*, the Court ordered the release of Maria Elena Loayza Tamayo, a university professor wrongfully convicted under emergency decrees seeking to control terrorist activities by *Shining Path* and *Tupac Amaru* guerrilla forces. Peru reluctantly released Ms. Loayza, but continued to refuse to execute the remainder of the Court's judgment, which required certain reforms of Peruvian law and the payment of reparations to Ms. Loayza.<sup>15</sup> Taken together, the *Loayza Tamayo Case* and *Castillo Petruzzi Case* judgments were legal rejections of Peru's anti-terrorism tactics, and put Peru's hard-line practices at political risk in the rest of the Americas.

The *Castillo Petruzzi Case* involved many witnesses and extensive evidence offered to the Court. The Court noted again that circumstantial evidence was sufficient to prove a case before them and re-

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13. See *Castillo Petruzzi Case*, Decision on the Merits, May 30, 1999, Inter-Am. Ct. H.R. (Ser. C) No. 52 (1999), available at [http://corteidh-oea.nu.or.cr/ci/PUBLICAC/SERIE\\_C/C\\_52\\_ESP.HTM](http://corteidh-oea.nu.or.cr/ci/PUBLICAC/SERIE_C/C_52_ESP.HTM) (last visited Oct. 23, 2000) (charging Peru with violating the American Convention on Human Rights and the Vienna Convention on Consular Relations).

14. See *Loayza Tamayo Case*, Judgment, Sept. 17, 1997, Inter-Am. Ct. H.R. (Ser. C) No. 33 (1997), available at [http://corteidh-oea.nu.or.cr/ci/PUBLICAC/SERIE\\_C/C\\_33\\_ESP.HTM](http://corteidh-oea.nu.or.cr/ci/PUBLICAC/SERIE_C/C_33_ESP.HTM) (last visited Oct. 23, 2000) (charging Peru with violations of Articles 7.5, 8.1, 8.2, and 8.4 of the American Convention).

15. See Press Release, Inter-Am. Ct. H.R., CDH-CP 18/99 Español (Nov. 17, 1999), available at [http://www.1.umn.edu/humanrts/iachr/\\_Spr28-99.html](http://www.1.umn.edu/humanrts/iachr/_Spr28-99.html) (last visited Oct. 23, 2000) (noting that the Peruvian Supreme Court refused to carry out the Court's decision, thereby ignoring good faith compliance with treaty obligations).

jected Peru's generic assertion that the witnesses at the Court were not impartial.<sup>16</sup> As in its past jurisprudence, the Court noted that it was not passing on the individual guilt or innocence of the men charged with treason or terrorism, but on Peru's responsibility for human rights violations occurring during the process of their arrest, detention, trial, conviction, sentencing, and incarceration.<sup>17</sup> The Court found that the defendants could not receive a fair trial before "faceless" (*i.e.*, completely anonymous) military judges. It condemned both the use of military tribunals and the use of "faceless" judges. The Court noted that a civilian should not be judged by the military except in "exceptional" circumstances, and that it was impossible for the defendants to receive a fair trial when the judges were chosen from the same forces that are charged with combating terrorism. This is particularly true, noted the Court, when the military forces control the naming and promotion of the very judges who are to determine "impartially" the guilt or innocence of those charged with terrorism or treason.<sup>18</sup> These characteristics of the courts that convicted the accused, combined with the use of "faceless" judges, constituted a denial of Article 8.1 of the American Convention, which requires an impartial and independent tribunal.<sup>19</sup>

The Court also found violations of several other provisions of the American Convention, namely: Article 5 (conditions of confinement were cruel, inhuman, and degrading); Article 7.5 (detention for up to 30 days without presentment to a judge is not sufficiently prompt); Article 8.2(b), (c), and (d) (defendants were prevented from an appropriate choice of defense counsel and adequate preparation of their defenses); Article 8.2(f) (violation of the opportunity to question witnesses testifying against them); Article 8.2(h) (right to appeal); Article 8.3 (coercion of confessions where defendants are told noth-

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16. See *Castillo Petruzzi Case*, Decision on the Merits, May 30, 1999, Inter-Am. Ct. H.R. (Ser. C) No. 52 (1999), paras. 62, 84, available at [http://corteidh-oea.nu.or.cr/ci/PUBLICAC/SERIE\\_C/C\\_52\\_ESP.HTM](http://corteidh-oea.nu.or.cr/ci/PUBLICAC/SERIE_C/C_52_ESP.HTM) (last visited Oct. 23, 2000).

17. See *id.* para. 90 (emphasizing that the decision not to sanction Peru's agents was characteristic of a human rights tribunal, which is not a penal court).

18. See *id.* paras. 125, 130, 133.

19. See American Convention, *supra* note 9, art. 8.1 (defining the right to a fair trial under the Convention).



ing of the adverse consequences of not remaining silent); Article 8.5 (right to a public trial); Article 9 (offenses of “terrorism” and “treason” are not sufficiently distinguishable to satisfy the principle of legality); and Articles 7.6 and 25 (no opportunity to challenge confinement).<sup>20</sup> The Court concluded that: “if the acts that sustain the conviction are affected by serious errors, which deprive them of the effectiveness which they would normally have, the conviction cannot stand.”<sup>21</sup> The Court, after finding that the statute under which the defendants were convicted was fundamentally flawed because it subjected civilians to military justice, also concluded that those statutory provisions violate the American Convention and require domestic legislative reform.<sup>22</sup>

On July 1, 1999, Peru sent a letter to the OAS Secretary General announcing that, effective immediately, it was withdrawing from the jurisdiction of the Court.<sup>23</sup> This peremptory attempt at avoiding compliance with the Court’s rulings also placed into jeopardy two pending cases of singular importance to Peru. The first, the *Ivcher Bronstein Case*,<sup>24</sup> involved freedom of expression. Baruch Ivcher

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20. As in earlier cases and all other decisions in contentious cases in 1999, the Court also found violations of Articles 1.1 and 2, which require State Parties to the American Convention to respect convention rights and to guarantee their protection by the adoption of domestic legislation to that effect. The Court declined to find a violation of Article 20, which addresses the right to nationality. The Commission argued that the Chilean nationality of the defendants prevented their standing trial for the crime of treason, which has as one of its essential elements the threat to or attack on one’s own nation. The Court found that the government did not question the defendants’ Chilean nationality, but that, in light of the Article 9 violation, there was a separate question as to who appropriately could be convicted for the crimes of treason or terrorism.

21. See *Castillo Petruzzi Case*, Decision on the Merits, May 30, 1999, Inter-Am. Ct. H.R. (Ser. C) No. 52 (1999), para. 219, available at [http://corteidh-oea.nu.or.cr/ci/PUBLICAC/SERIE\\_C/C\\_52\\_ESP.HTM](http://corteidh-oea.nu.or.cr/ci/PUBLICAC/SERIE_C/C_52_ESP.HTM) (last visited Oct. 23, 2000). Any textual translations are unofficial, and are provided by the authors.

22. See *id.* para. 222 (ordering Peru to conform its internal laws to the standards of the American Convention).

23. See Cassel, *supra* note 10, at 169, 173–75 (explaining that the Court rejected Peru’s immediate withdrawal from its jurisdiction).

24. See *Ivcher Bronstein Case*, Jurisdiction, Sept. 24, 1999, Inter-Am. Ct. H.R. (Ser. C) No. 54 (1999), available at [http://corteidh-oea.nu.or.cr/ci/PUBLICAC/SERIE\\_C/C\\_54\\_ESP.HTM](http://corteidh-oea.nu.or.cr/ci/PUBLICAC/SERIE_C/C_54_ESP.HTM) (last visited Oct. 23, 2000) (finding that the Court’s

Bronstein had renounced his Israeli citizenship to obtain Peruvian nationality, which would thereby permit him to operate a television station in Peru. When the station broadcast reports of torture by military intelligence officials and disclosed other embarrassing information regarding President Fujimori's administration, Peru revoked Ivcher's citizenship and forced him into exile, thus permitting the closing of the station. The second, the *Constitutional Court Case*,<sup>25</sup> involved the removal of three judges from the Peruvian Constitutional Court when they ruled unconstitutional a law that would have permitted President Fujimori to run for a third consecutive term.

The Court ruled in both cases that Peru's attempt to withdraw from the jurisdiction of the Court had no legal effect, as it was not contemplated in the treaty structure of the Inter-American system. The Court did so by invoking its inherent power to determine its own jurisdiction. The only way to quit the system, the Court held, was to denounce the American Convention as a whole. Under Article 78 of the American Convention, such a denunciation requires one year's notice by the State Party before it becomes effective, and the State Party remains subject to the Court's jurisdiction during that one-year period.<sup>26</sup> Assuming *arguendo* that it was possible for Peru to withdraw from the Court's jurisdiction, which the Court rejected as a viable hypothesis, the action would not be effective immediately. Instead, the withdrawal would require a "reasonable period" of at least two months, as set out in Article 56.2 of the Vienna Convention on the Law of Treaties,<sup>27</sup> before it could take effect.<sup>28</sup> Consequently, the

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jurisdiction was not compromised by Peru's letter of withdrawal).

25. See *Constitutional Court Case*, Jurisdiction, Sept. 24, 1999, Inter-Am. Ct. H.R. (Ser. C) No. 55 (1999), available at [http://corteidh-oea.nu.or.cr/ci-PUBLICAC/SERIE\\_C/C\\_55\\_ESP.HTM](http://corteidh-oea.nu.or.cr/ci-PUBLICAC/SERIE_C/C_55_ESP.HTM) (last visited Oct. 23, 2000) [hereinafter *Constitutional Court Case*] (stating that the case would continue under the Court's jurisdiction despite Peru's attempt to withdraw).

26. See *Ivcher Bronstein Case*, Jurisdiction, Sept. 24, 1999, Inter-Am. Ct. H.R. (Ser. C) No. 54 (1999), para. 40, available at [http://corteidh-oea.nu.or.cr/ci/PUBLICAC/SERIE\\_C/C\\_54\\_ESP.HTM](http://corteidh-oea.nu.or.cr/ci/PUBLICAC/SERIE_C/C_54_ESP.HTM) (last visited Oct. 23, 2000) (explaining the Court's interpretation of the American Convention).

27. See Vienna Convention on the Law of Treaties, *opened for signature* May 23, 1969, art. 56.2, U.N. Doc. A/CONF.39/27, 8 I.L.M. 679, 699 (1969) (establishing the standard for withdrawal from a treaty that does not contain a termina-

Court ordered the *Ivcher Bronstein* and *Constitutional Court* cases to proceed.

The silence from the OAS in the wake of Peru's actions was deafening. Neither the Secretary General nor the General Assembly has made a public statement to address Peru's actions or the 1998 denunciation of the American Convention by the government of Trinidad and Tobago. Trinidad and Tobago announced its denunciation as an expression of its frustration with Commission and Court rulings preventing it from carrying out death sentences that violated due process.<sup>29</sup> The United States, the European Union, the European Court of Human Rights, and the Commission<sup>30</sup> issued condemnations of Peru's attempted withdrawal.<sup>31</sup> The political consequences of seeming support for terrorism, however, simply made the issue too politically charged to permit open discussion within the OAS.

Moreover, the Court's confrontations with Peru were not finished for 1999. In September 1999, the Court issued its ruling on the merits in the *Cesti Hurtado Case*.<sup>32</sup> That case also brought into question the use of military jurisdiction for the trial of civilians. Gustavo Cesti was a retired military officer who ran a private security firm, "Top Security," for the Logistics Command of the Peruvian Army (COLOGE). In November 1996, the Commanding General of COLOGE filed criminal charges against Mr. Cesti in the highest military court of Peru. The charges included "disobedience to the

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tion provision).

28. *See id.* para. 52 (declaring that State Parties to a treaty without a withdrawal or denunciation provision must give 12 months notice of their intentions to withdraw or denounce the treaty).

29. *See Cassel, supra* note 10, at 168 (suggesting that Trinidad and Tobago's withdrawal may have motivated Peru to follow).

30. *See id.*

31. *See* Press Release, Inter-Am. Ct. H.R., CDH-CP13/99 Ingles (Oct. 2, 1999), available at <http://www.l.umn.edu/humanrts/iachr/pr23-99.html> (last visited Oct. 23, 2000) (stating that the Court's declaration of jurisdiction over Peru strengthened the growing demand for the international protection of human rights).

32. *See Cesti Hurtado Case*, Merits, Sept. 29, 1999, Inter-Am. Ct. H.R. (Ser. C) No. 56 (1999), available at [http://corteidh-oea.nu.or.cr/ci/PUBLICAC/SERIE\\_C/C\\_56\\_ESP.HTM](http://corteidh-oea.nu.or.cr/ci/PUBLICAC/SERIE_C/C_56_ESP.HTM) (last visited Oct. 23, 2000) (asserting that, once again, Peru's action violated the American Convention).

duties and dignity of the office," negligence, and fraud. Cesti filed a petition for habeas corpus with the Peruvian civil courts in January 1997, setting off a jurisdictional battle for supremacy between the civilian and military courts that bounced from court to court. In February 1997, the military courts found the civil court's order of release to be "inapplicable" to it.<sup>33</sup>

The Court found that habeas corpus, under the relevant domestic and international provisions of law, lies against "any authority, functionary or person who puts at risk or otherwise threatens individual liberty or constitutional rights connected thereto."<sup>34</sup> It therefore found violations of Articles 2.2, 7.6, and 25.1 of the American Convention. Additionally, the Court found violations of Articles 7.1, 7.2, and 7.3, all dealing with grounds for deprivation of liberty.<sup>35</sup> Finally, as in *Castillo Petruzzi*, the Court found that the military tribunals in question lacked appropriate independence, as guaranteed under Article 8.1 of the American Convention.<sup>36</sup> Its concluding paragraphs held that in this case, "trial . . . in a military court is incompatible with the American Convention on Human Rights, and [the Court] orders the State to nullify that process, as well as the effects which derive from it."<sup>37</sup> It further ordered the payment of reparations and costs to Mr. Cesti. Holding that there was not sufficient proof of such violations, the Court declined to find violations of the following articles: Article 5.2 (cruel, inhuman, or degrading treatment); Article 8.2 (procedural aspects of case); 11 (right to honor and reputation); and Article 21 (right to property, here alleged to be personal possessions lost in the process as well as the right to work).

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33. *See id.* para. 72 (noting that Gustavo Cesti was detained and incarcerated on Feb. 28, 1999).

34. *Id.* para. 124.

35. *See id.* paras. 134-43.

36. *See id.* para. 151 (outlining the guarantees of Article 8.1 of the American Convention).

37. *See Cesti Hurtado Case*, Merits, Sept. 29, 1999, Inter-Am. Ct. H.R. (Ser. C) No. 56 (1999), at Resolution, Point 8, *available at* [http://corteidh-oea.nu.or.cr/ci/PUBLICAC/SERIE\\_C/C\\_56\\_ESP.HTM](http://corteidh-oea.nu.or.cr/ci/PUBLICAC/SERIE_C/C_56_ESP.HTM) (last visited Oct. 23, 2000).

## B. OTHER ACTIONS IN THE COURT

1. *Advisory Opinion OC-16 (Application of the Vienna Convention on Consular Relations)*

On December 9, 1997, Mexico submitted a series of questions to the Court seeking invocation of the Court's advisory jurisdiction on interpretation of several treaties, most prominently the Vienna Convention on Consular Relations ("VCCR"). The twelve questions presented a range of concerns on the interpretation of the VCCR, but the Mexican government was most concerned about the more than sixty Mexican nationals under death sentences in the United States and the United States' obligations to provide the Mexicans with full access to their consulates. The Mexican action was taken in the wake of the events leading to the execution of a Paraguayan national, Angel Breard, in Virginia in April 1998. That case was reviewed by both the International Court of Justice ("ICJ") and the United States Supreme Court, where Mexico appeared as a friend of the court on Paraguay's behalf.<sup>38</sup> The ICJ requested provisional measures on Mr. Breard's behalf pending its review of the matter,<sup>39</sup> but the United States Supreme Court and the Department of State declined to intervene.<sup>40</sup> On April 14, 1998, Breard was executed, thereby augmenting Mexico's concern over the status of its many countrymen on death row in the United States.

On June 12-13, 1998, the Court held oral arguments on the issues raised by Mexico. Participation in the proceedings was the most extensive in the Court's history. Countries that appeared included Mexico, El Salvador, Dominican Republic, Honduras, Guatemala, Paraguay, Costa Rica, and the United States. This was the United States government's first appearance before the Court. Amici from the human rights community included fifteen organizations, indi-

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38. *See Breard v. Greene*, 523 U.S. 371, 378 (1998).

39. *Case Concerning the Vienna Convention on Consular Relations (Para. v. U.S.)*, 1998 I.C.J. 426 (Apr. 9), available at [http://www.icj-cij.org/icjwww/icasel/ipaus/ipausorder/ipaus\\_order\\_090498.htm](http://www.icj-cij.org/icjwww/icasel/ipaus/ipausorder/ipaus_order_090498.htm) (last visited Oct. 24, 2000).

40. *See Breard v. Greene*, 523 U.S. 371, 378 (1998) (noting that proof that Virginia officials violated the VCCR would not have affected Breard's final conviction without showing that the violation had an effect on his trial).

viduals, and academic institutions with an interest in the outcome of the litigation.

On October 1, 1999, the Court rendered its decision.<sup>41</sup> There were three central questions to the Court's deliberations. The first was whether the VCCR vests individuals with human rights that may be invoked personally via that treaty. The Court found that the VCCR recognizes a personal human right for foreign detainees to information on consular access, and to that access itself. Second, in determining how to interpret the expression "without delay," as used in Article 36.1(b) of the VCCR, the Court held that the expression means that the State has a duty to inform the detainee of the right to consular access "the moment it brings her or him under custody or, in any event, before she or he makes the first statement before the authorities."<sup>42</sup> Third, and most important, the Court discussed the remedy for violation of the treaty's guarantees. Here, the Court's decision, which was opaque at best, held that non-observance of the treaty "affects the guarantees of due process," and imposition of the death penalty without its observance constitutes a violation of the right to life arbitrarily, which has "the legal consequences that are inherent to a violation of this nature . . ."<sup>43</sup> The Court's decision may thus be read to support those who seek to enforce provisions of the VCCR as a kind of "consular Miranda warning," which would result in suppression of evidence taken in violation of the warnings. It certainly provides useful arguments to any lawyer with a foreign national client, particularly at the pre-trial stage of either criminal or immigration proceedings where the client is in custody.

## 2. *Guatemalan Street Children Case*

On November 19, 1999, the Court decided the *Villagran Morales and Others Case*, also known as the "Street Children Case," from Guatemala.<sup>44</sup> This case involved the torture and murder of five young

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41. See Advisory Opinion OC-16/99, *supra* note 6 (interpreting the VCCR).

42. Press Release, Inter-Am. Ct. H.R., CDH/CP14.99 Ingles (Oct. 2, 1999), available at <http://www1.umn.edu/humanrts/iachr/pr24-99.html>. (last visited Oct. 23, 2000).

43. *Id.*

44. *Caso Villagran Morales y Otros (Caso de los "Ninos de la Calle")*, Judg-

people from Guatemala, all of whom were part of the growing Latin American phenomenon of street children. These children, who come from poor families and frequently stay away from them for prolonged periods of time, are often involved in crimes such as drug use and sales and other petty or more serious offenses. Police forces throughout the region treat these youngsters as criminals, often arresting, beating, and even killing them in a misguided effort at crime control.

Here, the evidence provided on the background of the five petitioners was rich and detailed, gathered and coordinated by *Casa Alianza*, a child advocacy non-governmental organization with regional programs throughout Latin America. Evidence of the patterns of abuse of these street children by police was offered by a *Casa Alianza* representative, and other proof came from parents and surviving street children, who painted a detailed tapestry of devastating poverty and deprivation. Expert testimony on forensic evidence as to cause of death and mistreatment before death was also offered, as was expert testimony on the state of domestic law in Guatemala to deal with the phenomenon of street children and, more generally, the treatment of delinquency. Finally, the petitioners themselves offered extensive files from domestic legal proceedings involving investigation into the deaths of the five youths, none of which produced a criminal conviction. The evidence was so overwhelming, in fact, that the Guatemalan government provided no contrary proof, nor did it even answer the allegations of the petitioners in writing or in court.

Accepting the allegations as true, in the absence of contrary evidence, the Court found for the petitioners. First, the Court adopted the definition of "child" found in Article 1 of the Convention on the Rights of the Child ("Children's Convention"), the most widely-ratified human rights treaty in the world.<sup>45</sup> That treaty adopts eighteen as the age of majority in the absence of a younger age in domestic legislation. Because Guatemala also uses that age under its con-

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ment of Nov. 19, 1999 [English translation: *Street Children Case*] (on file with authors).

45. See Convention on the Rights of the Child, Nov. 20, 1989, art. 1, U.N. Doc. A/RES/44/25, 28 I.L.M. 1457, 1459 (1989) (affirming ratification by every Member State of the United Nations except the United States and Somalia).

stitution, the Court concluded that a child is anyone under the age of eighteen. The Court noted that in September 1990 Guatemala became a party to the Children's Convention, and that its 1995 report to the Committee on the Rights of the Child admitted state wrongdoing in the treatment of street children.

The most important aspect of this decision deals with its treatment of the three victims who were children at the time of their murders. Using Article 19 of the American Convention as its touchstone, the Court found that the reason for that article arises from the recognition of "the vulnerability of children and their inability to secure for themselves the respect of their rights."<sup>46</sup> The Court found that street children are victims of "double aggression." First, states do not prevent street children from being "thrown into misery, depriving them of a few minimum conditions for a dignified life, and impeding them from 'full and harmonious development of their personalities.'" Second, the governments "attack their physical, psychological and moral integrity, even to the point of taking their lives."<sup>47</sup>

The Court then invoked Articles 2, 3, 6, 20, 27, and 37 of the Children's Convention to help make more precise the meaning of "measures of protection" required in Article 19 of the American Convention. The Court concluded that these protections include "non-discrimination, special assistance for those children removed from the family environment, the guarantee of supervision and development of the child, the right to an adequate standard of living and the social re-integration of every child victimized by abandonment or exploitation."<sup>48</sup> As for those children who had been identified as "delinquent," the Court noted that intervention by the State in the lives of youthful offenders should result in "the strongest efforts to guarantee rehabilitation . . . in order to permit them to fulfill a constructive and productive role in society."<sup>49</sup> This view differs markedly from current United States policy toward youthful offenders, where treatment and punishment of children as adult offenders is

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46. *Caso Villagran Morales y Otros (Caso de los "Ninos de la Calle")*, Judgment of Nov. 19, 1999, para. 185 (on file with authors).

47. *Id.* para. 191.

48. *Id.* para. 196.

49. *Id.* para. 197.



the growing norm.<sup>50</sup>

In addition to the violations of children's rights, the Court also used this occasion to apply again the Inter-American Convention to Prevent and Punish Torture ("Inter-American Torture Convention").<sup>51</sup> This instrument, the Court notes, makes more precise and amplifies the content of Article 5 of the American Convention, which also condemns torture as a human rights violation. The Court then proceeded to determine its authority to apply and interpret the Inter-American Torture Convention, by virtue of the fact that Guatemala had ratified it and the American Convention. Under the broad provisions of Article 8 of the Inter-American Torture Convention, issues regarding its violation can be submitted "to the international fora whose competence has been recognized by that State."<sup>52</sup> The Court then found violations of Articles 1, 6, and 8 of the Inter-American Torture Convention.

Finally, the Court found violations of the American Convention itself. These violations included: Article 4 (right to life); Article 5 (right to personal integrity and protection against torture or other cruel, inhuman, or degrading treatment); and Articles 8, 11, and 25 (rights to procedural protection and privacy). Notably, the Court found that the violations of Article 5 flowed to surviving family members as well. The families suffered anxiety and fear for their lost and murdered children. The Court inferred psychological as well as physical torture of the children by virtue of their isolation from the outside world and their knowledge of the grave risks to their lives and physical safety.<sup>53</sup> The case will now proceed to a reparations stage.

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50. See, e.g., Rene Sanchez & William Booth, *California Toughens Juvenile Crime Laws; Rules to Treat Young Offenders More Like Adults*, WASH. POST, Mar. 13, 2000, at A3 (noting the conviction in Michigan of 13-year-old as an adult for a murder committed when he was 11).

51. See Inter-American Convention to Prevent and Punish Torture, entered into force Feb. 22, 1987, OAS Treaty Series No. 67, reprinted in 25 I.L.M. 519 (1986) [hereinafter Inter-American Torture Convention] (noting that the treaty had been applied previously in the *Paniagua Morales and Others Case*).

52. Inter-American Torture Convention, *supra* note 51, art. 8.

53. See *Caso Villagran Morales y Otros (Caso de los "Ninos de la Calle")*, Judgment of Nov. 19, 1999, paras. 163, 171 (on file with authors).

### 3. *Nicaraguan Indigenous Peoples Case*

On February 1, 2000, the Court ruled favorably on the admissibility of the complaint in the *Mayagna (Sumo) Awas Tingni Community Case*.<sup>54</sup> The case raises important questions on the right to ancestral title to tribal lands, an issue presented to the Court as a violation of Article 21 of the American Convention that concerns the right to property. The *Awas Tingni* Community is made up of 142 families, totaling 630 individuals, who live in the Northern Autonomous Region of the Atlantic Coast of Nicaragua ("Autonomous Region"). The native language of this people is Mayagna, and they live under customary tribal law, as provided for under Articles 89 and 90 of the Nicaraguan Constitution, as well as similar provisions of the Autonomy Statute of 1987.<sup>55</sup> In 1995, the leadership of the Autonomous Region allegedly signed an agreement concerning forestry operations with Sol del Caribe S.A. ("SOLCARSA"), a logging company. The community's leadership filed a writ of *amparo*<sup>56</sup> with the Nicaraguan government, seeking to demarcate the exact boundaries of tribal lands. That writ led to a complex series of interactions with the government, none of which yielded the desired result of demarcation. Meanwhile, the forestry operations proceeded.

A complaint was filed with the Commission in October 1995, well before the conclusion of any domestic procedure. The Commission, however, referred the case to the Court. The Court rejected several arguments raised by Nicaragua on the issue of admissibility, thus permitting this interesting case to proceed on violations of the right to property, under Article 21, and access to the courts, under Article 25 of the American Convention.

### 4. *Las Palmeras Case*

On February 4, 2000, the Court ruled on the admissibility of the

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54. *Caso de la Comunidad Mayagna (Sumo) Awas Tingni*, Preliminary Exceptions, Judgment of Feb. 1, 2000 (on file with authors).

55. See NICAR. CONST. arts. 89, 90 (1987). A Spanish version of the 1987 Nicaraguan Constitution is available at <http://www.georgetown.edu/pdba/Constitutions/Nica/nica95.html>.

56. A writ of *amparo* is a summary proceeding designed to guarantee constitutional rights.

*Las Palmeras Case*.<sup>57</sup> This case involved a on January 23, 1991, attack by police and military forces on a rural school in Las Palmeras, Putumayo Department, Colombia, that resulted in the deaths of six people and the wounding of a child. The case provided the Court with its first opportunity to rule on its powers to apply directly Common Article 3 of the Geneva Conventions of 1949.<sup>58</sup> Those provisions prohibit violence to the life or person of non-combatants in armed conflict of a non-international nature. The Commission requested that the Court apply those provisions directly to the deaths and injuries that occurred there. The Court declined, ruling that its powers under the American Convention limit it to the interpretation of the Geneva Conventions, and do not extend to their direct application. The Court, nonetheless, found the complaint admissible on several other grounds under the American Convention, and will proceed to the merits.

#### 5. *Venezuelan and Bolivian Confession of Responsibility Cases*

In the *Caracazo Case*, the Government of Venezuela admitted its responsibility for scores of deaths following the nationwide civil disturbances of February 1989.<sup>59</sup> Massive civil unrest occurred after the government imposed severe austerity measures that month. Petitioners were family members of a few of the estimated 276 victims who died from military violence that ensued when civil rights were suspended in an attempted government crackdown to quell the disturbances. The Commission, in its presentation to the Court, noted that military draftees of seventeen and eighteen years of age were given powerful weapons and little direction or control during that period. Some nine years after the events in question, the Committee of Family Members of Victims of the Unrest ("COFAVIC"), an organization of families who lost family members in the violence of 1989, had many bodies exhumed and examined to determine cause of

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57. *Caso Las Palmeras*, Preliminary Exceptions, Judgment of Feb. 4, 2000 (on file with authors).

58. See, e.g., Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field of Aug. 12, 1949, *entered into force* Oct. 21, 1950, art. 3, 75 U.N.T.S. 31, 32-33.

59. *Caso del Caracazo*, Judgment of Nov. 11, 1999 (on file with authors).

death. The facts clearly implicated the military in a pattern of extrajudicial executions. Venezuela accepted the facts as posed by the Commission, as well as its responsibility for violations of Articles 4.1, 5, 7, 8.1, 25.1, 25.2(a), and 27.3 of the American Convention.

Bolivia, in its first case before the Court, also accepted responsibility for the detention, torture, and death of Jose Carlos Trujillo Oroza, a twenty-one year-old university student who disappeared after the government took him into custody on December 23, 1971. Officials attempted to cover up the disappearance, and legal remedies sought by the family were unavailing. At a hearing on January 26, 2000, the government of Bolivia admitted responsibility and agreed to make reparations. The Court found violations of Articles 3, 4, 5.1, 5.2, 7, 8.1, and 25 of the Convention.<sup>60</sup>

### 6. Cases Interpreting Earlier Judgments on Reparations

In addition, the Court responded to requests from several governments seeking “interpretation” of earlier judgments of the Court in reparations. The decisions seem to indicate that the governments in question attempted to delay payment of money damages to the victims or fees and expenses to their lawyers. In the *Suarez Rosero Case*,<sup>61</sup> the Court held firm in its decision ordering payment of damages by the Ecuadorian government to the victim and his family, and of attorney’s fees and costs to the victim’s lawyers before the Court. In the *Loayza Tamayo Case*,<sup>62</sup> discussed above, the Court held that part of the payment ordered to be paid by Peru to the attorney was fees, and another part was expenses. Finally, in the *Blake Case*,<sup>63</sup> the Court reaffirmed an order to the Guatemalan government to pay both

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60. *Caso Trujillo Oroza*, Judgment of Enero 26, 2000 (on file with authors).

61. *Suárez Rosero Case*, Interpretation of Reparations Judgment, May 29, 1999, Inter-Am. Ct. H.R. (Ser. C) No. 51, available at [http://corteidh-oea.nu.or.cr/ci/PUBLICAC/SERIE\\_C/C\\_51\\_ESP.HTM](http://corteidh-oea.nu.or.cr/ci/PUBLICAC/SERIE_C/C_51_ESP.HTM) (last visited Oct. 23, 2000).

62. See *Loayza Tamayo Case*, Judgment, Sept. 17, 1997, Inter-Am. Ct. H.R. (Ser. C) No. 33 (1997), available at [http://corteidh-oea.nu.or.cr/ci/PUBLICAC/SERIE\\_C/C\\_33\\_ESP.HTM](http://corteidh-oea.nu.or.cr/ci/PUBLICAC/SERIE_C/C_33_ESP.HTM) (last visited Oct. 23, 2000).

63. *Blake Case*, Interpretation of Reparations Judgment, Oct. 1, 1999, Inter-Am. Ct. H.R. (Ser. C) No. 57, available at [http://corteidh-oea.nu.or.cr/ci/PUBLICAC/SERIE\\_C/C\\_57\\_ESP.HTM](http://corteidh-oea.nu.or.cr/ci/PUBLICAC/SERIE_C/C_57_ESP.HTM) (last visited Oct. 23, 2000).

in-and-out-of-court expenses of the victim's family.

### 7. *New Cases*

Press releases from the Court indicate two interesting cases taken by the Court, although no ruling has yet been announced. The first is the *Olmedo Bustos Case*, in which the Chilean Supreme Court censored the exhibition in Chile of the film "The Last Temptation of Christ." The Commission alleges violations of Articles 12 and 13 of the American Convention, protecting freedom of expression and freedom of conscience, respectively.<sup>64</sup>

The second case is the *Hiliare Case*, in which Trinidad and Tobago is challenged for its mandatory application of the death penalty.<sup>65</sup> Although Trinidad and Tobago announced its denunciation of the American Convention in May 1998,<sup>66</sup> this case was taken to the Court within the one-year period following notice of withdrawal, but before that withdrawal became effective. If the Court follows the precedent of the Peruvian cases discussed above, it must be anticipated that jurisdiction will not be denied as a result of Trinidad and Tobago's denunciation.

## II. ACTIONS OF THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

### A. CASES ON THE RIGHT TO TRUTH AND VALIDITY OF DOMESTIC AMNESTIES

In 1999, the Commission published a number of reports that, to-

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64. Press Release, Inter-Am. Ct. H.R., CDH-CP3/99 (Feb. 8, 1999), available at <http://corteidh-oea.nu.or.cr/ci/Prensa/Doc13.HTM> (last visited Oct. 23, 2000).

65. Although guided discretion in the imposition of the death penalty is constitutional in the United States, *Roberts v. Louisiana*, 428 U.S. 325 (1976), and *Woodson v. North Carolina*, 428 U.S. 280 (1976) held the mandatory imposition of the death penalty to be unconstitutional.

66. See Ralph Maraj, Minister of Foreign Affairs, Trinidad and Tobago, *Notice to Denounce the American Convention on Human Rights, May 26, 1998*, 20 HUM. RTS. L.J. 281 (1999).

gether, establish a clear doctrine requiring State Parties to the American Convention to take definitive actions with regard to accountability for grave human rights violations. The case of *Carmelo Soría Espinoza v Chile*<sup>67</sup> reiterates the Commission's prior finding of violation of the American Convention through the adoption of an amnesty law. The amnesty law was decreed by the de facto military government in 1978, and attempted to provide impunity for rights violations committed in connection with political repression beginning in 1973 in that country. The Commission found that Chile violated Articles 1, 2, 8, and 25 of the American Convention by virtue of a 1996 decision of the Chilean Supreme Court confirming the validity of the amnesty law. That court's decision foreclosed any possibility of prosecuting and punishing those responsible for the arbitrary execution of Carmelo Soría in 1976. This report reflects the now well-established position of the Commission concerning transitional justice and the scope of the "right to truth," which contemplates not only the public acknowledgment of past serious human rights violations, but also their prosecution and punishment.

The *Soría* case is significant because there is no dispute as to the underlying facts or state responsibility. The Chilean Supreme Court affirmed the finding that the evidence demonstrated state agents, working under the auspices of the national intelligence service (DINA), were responsible for the kidnapping, torture, and execution of Carmelo Soría. Moreover, the victim's family benefitted from monetary reparations ordered by the National Commission on Reconciliation, and the state subsequently offered the victim's family significant additional financial and moral reparations. The family refused those offers and the complaint before the Commission went forward.

The Commission rested its findings on the obligation by State Parties to the American Convention to assure the compatibility of their laws with treaty commitments. This overall obligation means that a process of national reconciliation cannot leave victims of serious human rights violations unprotected and without access to a judicial remedy. The Commission argued that when a State takes away

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67. Case 11.725, Inter-Am. C.H.R., No. 133-99 (1999), available at <http://www.oas.org/> (last visited Oct. 14, 2000).

the ability to enforce rights, its commitment to protecting those rights becomes an empty promise. The right to a remedy, therefore, is not limited to financial compensation or acknowledgment of state responsibility. The Commission likewise asserted that because universal jurisdiction exists for the prosecution of these crimes, those responsible would be subject to judicial process outside of Chile in any event. The Commission also found that Carmelo Soría's attribute as an internationally-protected person, given his position as a United Nations functionary at the time of his abduction and killing, required that Chile's national law provide for jurisdiction to try his murderers. Chile's adherence to the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons including Diplomats contains a specific obligation to that effect.<sup>68</sup>

The Commission based its conclusions in the *Soría* case on the finding that absolute amnesties for serious human rights violations effectively foreclose the right to a judicial remedy under Article 25 of the American Convention and undermine the right to due process under Article 8. Furthermore, the Commission found that when a government fails to take appropriate steps to protect all the rights guaranteed under the American Conventions, including the prosecution and punishment of responsible individuals, granting that government absolute amnesty would violate the underlying State obligation to respect and ensure such guaranteed rights.

Two related decisions explore more fully the significance of the

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68. Article 3(1)(c) of the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons commits signatories to "take such measures as may be necessary to establish its jurisdiction over the crimes set forth in article 2 [e.g., murder, kidnapping or other attack upon the person or liberty of an internationally protected person] in the following cases: . . . (c) when the crime is committed against and internationally protected person as defined in article 1 who enjoys his status as such by virtue of functions which he exercises on behalf of that state." Article 1 defines an internationally protected person, in relevant part, as "any representative or official of a State or any official or other agent of an international organization of an intergovernmental character who, at the time when and in the place where a crime against him, his official premises, his private accommodation or his means of transport is committed, is entitled pursuant to international law to special protection from any attack on his person, freedom or dignity, as well as members of his family forming part of his household." Chile signed and acceded to this Convention as of February 20, 1977, the first year of its entry into force internationally.

“right to truth,” and are particularly relevant to those claims of human rights violations where there has not been any public and official acknowledgment of responsibility.”

The case of *Ignacio Ellacuria et al. v El Salvador (Jesuit Case)*<sup>69</sup> concerns the 1989 assassination of six priests and an employee and her child at the Central American University in El Salvador. The final report issued in 1999 engaged in a lengthy analysis of the facts and placed a great deal of emphasis on the deliberate and planned nature of the crime, ordered by the highest level military officials, the subsequent cover-up, and the distortion of the investigation and judicial process. The domestic trials culminated in an absolute amnesty for the limited number of middle and low level members of the military who had been sentenced for these multiple murders. The Commission stressed, throughout its decision, the nature of the right to truth as a right accruing to society and to individual victims and their families. Moreover, the effective exercise of this right is essential to state compliance with its human rights obligations.

According to the decision, a judicial determination of the truth represents a form of reparation to the individual victim and his or her family in two ways. First, the truth about what happened ends the uncertainty about the circumstances surrounding the ultimate fate of the victim. Second, it constitutes official acknowledgment of the wrong done. As a social or collective right, revealing the truth is a form of prevention of future human rights violations. Knowing the truth about the circumstances of the abuses gives access to the information necessary for citizens to take action, and through democratic participation, develop means of preventing the possibility of future

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69. The new Guatemalan government's recent willingness to accept responsibility for some cases pending before the Commission includes the commitment to signing friendly settlements that contemplate promises to pursue prosecutions of responsible individuals in domestic courts. This commitment by the executive branch, however, cannot be interpreted as requiring a particular result in individual prosecutions. The most certain measure of State compliance with these agreements will most likely be assessed under a due process analysis, in the context of a justice system that remains severely deficient and heavily influenced by political concerns.

70. Case 10.488, Inter-Am. C.H.R., No. 136-99, para. 229 (1999), available at <http://www.oas.org/> (last visited Oct. 14, 2000).



violations. Moreover, speaking the truth is an affirmation, under a deterrence theory of criminal prosecution, that viable means for prevention exist, e.g., investigation, prosecution, and sanction of responsible individuals.

The Commission also specifically addressed the role of truth commissions in the scheme of compliance with the right to truth, stating: "The value of truth commissions is that they are created not with the presumption that there will be no trials, but to constitute a step towards knowing the truth and, ultimately, making justice prevail."<sup>71</sup> Truth Commissions are not judicial bodies, nor do they have judicial functions. Therefore, those commissions lack the competency to fulfill obligations associated with the right to effective judicial guarantees under Article 8, and judicial remedies under Article 25 of the American Convention. Consequently, truth commissions are not substitutes for the State's obligation to investigate human rights violations, identify the responsible individuals, impose appropriate sanctions, and assure adequate reparations, "all within the overriding need to combat impunity."<sup>72</sup> One last significant feature of the *Ignacio Ellacuria* decision<sup>73</sup> is the Commission's reliance on El

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71. *Id.* para. 229.

72. *Id.* para. 230.

73. In a decision dated September 26, 2000, the Constitutional Chamber of the Supreme Court of El Salvador announced a decision undermining significantly the purported absolute nature of El Salvador's amnesty law, Decree 486 Law of General Amnesty for the Consolidation of Peace, which came into effect in 1993 in the wake of the release of Salvador's truth commission report. Brought by various petitioners challenging the constitutionality of the law, the Supreme Court recognized the fundamental nature of the right to redress violations of fundamental human rights guaranteed under Article 2 of the Salvadoran Constitution. The Court affirmed the availability of both criminal and civil law remedies for those types of crimes. The Court's analysis states that the amnesty law cannot be applied when it impedes the exercise of protections that guarantee and defend individual rights, including judicial protection. Other more limited exemptions to the amnesty law are also discussed. However, the Decree itself is upheld, as interpreted, and it remains for the lower courts to implement this decision in specific cases. Issues complicating the application of the exceptions to the amnesty law include, extremely short statutes of limitations for even serious crimes, and practical considerations concerning the gathering of evidence. The exceptions to the amnesty law do not necessarily preclude pardons or clemency following a guilty verdict. The most significant aspect of this decision from the perspective of the development of human rights law is the Supreme Court's affirmation of its obligation to review the con-

Salvador's Truth Commission Report as supporting evidence for its factual findings regarding the circumstances of the killings at the Central American University, and the identity of those responsible for the murders.

Another Commission report that develops the concept of the "right to truth" is *Lucio Parada Cea, et. al. v El Salvador*.<sup>74</sup> The underlying facts of this case refer to a series of arrests followed by the torture and extra-judicial execution of those arrested during the internal conflict in El Salvador. A special counter-insurgency military battalion (Atlacatl) committed these acts. State responsibility for these violations is neither acknowledged nor seriously contested. At issue were allegations that the State had violated the rights of due process and of a judicial remedy for the victims and their families, because it had neither fully investigated the crimes nor brought the responsible individuals to justice.

In exploring this issue, the Commission made some general pronouncements regarding amnesty laws and State Party obligations under the American Convention:

[T]he Commission has repeatedly indicated that the enforcement of amnesties renders null and void the international obligations imposed on States Parties by Article 1(1) of the Convention to respect the rights and freedoms recognized therein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights, without discrimination of any type.<sup>75</sup>

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stitutionality of the acts of other branches of government as a means of protecting the constitutional order defined by respect for fundamental human rights and an economic order that tends to ensure for all inhabitants an existence worthy of human beings. With regard to the legal weight of international treaties on the subject of human rights, the Supreme Court held that national legislation not of a constitutional rank, is subordinate to the provisions of those treaties. The Court relied on Art. 144 of the Salvadoran Constitution which states that ratified treaties are laws of the Republic and that posterior legislation may not modify those commitments. Thus, the provisions of international human rights treaties ratified by El Salvador must be applied in determining the constitutionality of the amnesty decree. This decision constitutes significant progress towards the application of international human rights law in El Salvador's national legal system.

74. Case 10.480, Inter-Am. C.H.R., No. 1/99 (1999), available at <http://www.oas.org/> (last visited Oct. 14, 2000).

75. *Id.* para. 107.

Individual petitions against certain States Parties to the American Convention which have passed amnesty laws granting impunity to [sic] serious violations of human rights committed against persons under its jurisdiction. These amnesty laws have deprived large segments of the population of the "right to justice in their just claims against those who committed excesses and acts of barbarity against them."<sup>76</sup>

More specifically, the Commission pointed to the study of the United Nations Rapporteur for Amnesty, which asserts that:

[I]mpunity arises from the fact that the States are not fulfilling their obligation to investigate these violations and adopt, particularly in the area of the administration of justice, measures to guarantee that those responsible for having committed the acts will be charged, tried, and punished. It arises, furthermore, from the fact that the States do not adopt appropriate measures for providing the victims with effective remedies, for repairing the damage they suffered and for preventing a repetition of such violations.<sup>77</sup>

The rights violated by the general amnesty include the guarantees of a right to a fair trial (Article 25, a right also attributable to victims and their families); the right to judicial protection (Article 8); and the obligation to investigate, the last of which is most clearly described in the Inter-American Court of Human Rights decision in *Velasquez-Rodriguez*.<sup>78</sup> All of these rights are constituent rights of the "right to truth," also characterized by reference to Article 13 of the Convention, which guarantees "the freedom to seek, receive and impart information." Thus, regarding general amnesties, the Commission points to "the presence of artificial or legal impediments . . . to accessing and obtaining important information regarding the facts and circumstances surrounding the violation of a fundamental right, constitutes an open violation . . . and hampers the establishment of domestic remedies which allow for judicial protection of the fundamental rights . . . in the Convention."<sup>79</sup> In sum, the effect of general

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76. *Id.* para. 108.

77. *Id.* para. 111.

78. I/A Court H.R., *Velásquez Rodríguez*, Judgement of July 29, 1988, Series C, No. 4.

79. Case 10.480, Inter-Am. C.H.R., No. 1/99 (1999), para. 152, *available at*

amnesty laws for serious human rights violations are seen as affecting the whole society, and not merely the individual victims. Moreover, these laws are seen as having a definitive impact on the prospects for the future of human rights protection in countries that are transitioning from situations of conflict to peace.

This analysis is pivotal in the discussion on the scope of the State's obligation to clarify the history of human rights abuses. One such case before the Commission, from Guatemala, involves a massacre of approximately 268 persons at *Plan de Sánchez, Rabinal, Baja Verapaz*.<sup>80</sup> In this case, petitioners have alleged violations of the American Convention, international humanitarian law, and international criminal law, by asserting that the massacre was part of a larger overall counter-insurgency campaign, constituting a crime against humanity and genocide. In its admissibility determination, the Commission once again recognized the limitations inherent in the nature of truth commissions with regard to achieving justice. The State's position recognizes that the Guatemalan Historical Clarification Commission, "is not empowered to exercise a judicial function, [however] it does constitute a 'national instance' and would issue considerations with respect to institutional responsibility for past human rights violations."<sup>81</sup> On the other hand, the State argues that it cannot be made to answer for the acts or omissions of the judicial branch with regard to a final determination on the issue of responsibility. Finally, the State has pointed out that the "killings were perpetrated in the context of an armed conflict in which abuses were committed by both sides."<sup>82</sup>

The denouement of this debate has become even more intriguing given that recently the Guatemalan government stated its willingness to enter into friendly settlements with an eye towards resolving promptly the large number of cases pending against it before the Commission. This offer includes contemplating settlements that

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<http://www.oas.org/> (last visited Oct. 14, 2000).

80. Case 11.673, Inter-Am. C.H.R. 131, OEA ser. L V.22.95, doc. 7 (1998) available at <http://heiwwww.unige.ch/humanrts/cases/1998/guatemala31-99.html> (last visited Oct. 14, 2000).

81. *Id.* para. 19.

82. *Id.*

would involve recognition of State responsibility, pushing forward on national criminal prosecutions and administrative remedies, and the provision of reparations for victims and their families. Specifically, Guatemala has recognized responsibility with regard to three Commission Reports adopted under Article 51 of the American Convention and relayed its intention to sign an agreement to comply with the Commission's recommendations in those reports. They refer to forty-four cases of extrajudicial executions and six cases of forced disappearances. In addition, the Guatemalan Government has acknowledged state responsibility for the well-documented massacre at *Dos Erres* (Case 11.420)<sup>83</sup> and the violation of the right to life of Marcos Fidel Quisquinay, a child (Case 12.199). It also has expressed a desire to achieve a friendly settlement as soon as possible in these two cases.<sup>84</sup> Finally, Guatemala has expressed its commitment to reactivate the investigations with regard to the national prosecution concerning the murder of the anthropologist Myrna Mack Chang (Case 10.636).<sup>85</sup>

Another case addressing the right to truth and the "right to mourn," as framed by petitioners, also was recently admitted for consideration by the Commission.<sup>86</sup> This case, *Carmen Aguiar de*

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83. Despite the failure to reach a judicial verdict in the case of this well-documented massacre, the Guatemalan President has recently promulgated an Executive Order creating a Special Commission for the Search and Identification of Relatives and Victims of the *Dos Erres* massacre. Executive Order 835-2000 agrees to provide reparations for the relatives of the victims killed December 6-8, 1982 by a special forces military group which included special forces instructors. Remains of 167 persons were identified in the single pit where the exhumation took place and included the remains of women, children, infants, and men. According to the Guatemalan Historical Clarification Commission Report, *Memoria del Silencio* (available at [www.hrdata.aas.org/ceh](http://www.hrdata.aas.org/ceh)) the estimated population of the village before its inhabitants were killed and the village razed was 300-350 persons. The formation of this Special Commission comes in the wake of the Portillo Government's acceptance of state responsibility for the massacre before the Inter-American Commission on Human Rights. See *Gobierno creó Comisión Especial de Búsqueda*, Dec. 2, 2000, *Prensa Libre*, available at <http://www.prensalibre.com> (last visited Dec. 14, 2000).

84. Press Release, Inter-Am. C.H.R., CDH-CP2/00 (Mar. 8, 2000), available at <http://www.oas.org/> (last visited Oct. 14, 2000).

85. *Id.*

86. Case 12.059, Inter-Am. C.H.R., No. 70/99 (1999), available at

*Lapacó v Argentina*, concerns the “Due Obedience Law”<sup>87</sup> that Argentina passed after the Argentinian truth commission (CONADEP)<sup>88</sup> issued its report. A domestic federal court has interpreted this law as foreclosing jurisdiction to order the production of documents concerning the fate of the petitioner’s daughter, Alejandra Lapaco, who disappeared on March 19, 1977. The Court stated that to do so would essentially signify the opening of a criminal investigation, an option unavailable by virtue of the Due Obedience Law.<sup>89</sup> The petitioner has countered that forced disappearance is a continuing crime and, therefore, its investigation is not limited by the temporal constraints of that decree.

#### B. CASES ON DETENTION, THE DEATH PENALTY, DUE PROCESS, AND THE USE OF FORCE

In *Coard et al. v United States*,<sup>90</sup> the Commission made a rare finding against the United States in connection with actions taken by the United States military following its invasion of Grenada. The Commission found that the United States had violated international humanitarian law when it detained Grenadian civilians without providing procedures for a timely appeal to contest the basis of the detention. The Commission concluded that:

Internment of civilians for imperative reasons of security may be permissible where the required basis is established in the particular case, and the

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<http://www.oas.org/> (last visited Oct. 14, 2000).

87. Law No. 23,521, cited in *Transitional Justice*, Vol. II, at 363 (Neil Kritz, ed., 1995). The full text of this law is available in English, in Volume III.

88. National Commission on Disappeared People, also known as the Sabato Commission after Ernesto Sabato, who presided over the Commission.

89. This law essentially precluded the success of any future criminal prosecutions of the military for disappearances, murders, and torture during the “dirty war” in Argentina, by creating an irrebuttable presumption in favor of military personnel up to the rank of General, that they appropriately acted pursuant to superior orders. Statutes of limitations were also enacted. However, recent prosecutions have been pursued based on specific exceptions to these laws, which allow for criminally charging those who kidnapped the children of the disappeared, some of whom were born in captivity, or disguised their identity.

90. Case 10,951, Inter-Am. C.H.R., No. 10,999 (1999), available at <http://www.oas.org/> (last visited Oct. 14, 2000).

Commission has found nothing in the record to refute the security justification presented by the United States.

However, the same rules which authorize this as an exceptional security measure require that it be implemented pursuant to a regular procedure which enables the detainee to be heard and to appeal the decision "with the least possible delay." That regular procedure ensures that the decision to maintain a person in detention does not rest with the agents who effectuated the deprivation of liberty, and ensures a minimal level of oversight by an entity with the authority to order release if warranted.

This is a fundamental safeguard against arbitrary or abusive detention, and the relevant provisions of the American Declaration and Fourth Geneva Convention analyzed above establish that this protection is to be afforded with the least possible delay. Taking into account that the petitioners were, according to the foregoing analysis, civilians detained for security reasons, and that they were held in the custody of United States forces for approximately nine to twelve days, including six to nine days after the effective cessation of fighting, the Commission observes that the petitioners were not afforded access to a review of the legality of their detention with the least possible delay.<sup>91</sup>

The initial allegations of petitioners alleging, *inter alia*, arbitrary detention, inhumane treatment, and due process violations were not admitted for consideration. The report, however, does contain a full discussion about the treatment of non-State Parties to the American Convention, such as the United States, in determining admissibility. The focus is on the scope of the Commission's jurisdiction over extra-territorial incidents and issues specific to the interpretation of international humanitarian law and the Fourth Geneva Convention on the treatment of prisoners.

Grenada also figured in the Commission's reports on two cases concerning the death penalty and due process. Five consolidated cases from Jamaica<sup>92</sup> and a single case from Grenada (*Rudolph*

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91. *Id.* para. 60.

92. *Annual Report of the Inter-American Commission of Human Rights 1999*, INTER-AM. C.H.R. ANN. REP., OEA/ser. L./V./II.106, doc. 6 rev. (Apr. 13, 1999), available at <http://www.cidh.org/annualrep/99eng/Table%20of%20Contents.htm> (last visited Oct. 14, 2000) (containing report no. 41/00 concerning cases 12.023 (*Desmond McKenzie*), 12.033 (*Andrew Downer and Alphonso Tracey*), 12.107 (*Carl Baker*), 12.126 (*Dwight Fletcher*), and 12.146 (*Anthony Rose*)).

*Baptiste Case*)<sup>93</sup> formed the backdrop for two Commission reports condemning the mandatory imposition of the death penalty for certain crimes as a violation of the right to life. Although there has been a moratorium on executions in Grenada since 1978, the death penalty continues to be imposed as a matter of law. Consequently, the arguments of the petitioners focus on the cruelty of maintaining a death sentence where there seems to be no political will to impose it. The only purpose it can then have is of keeping the prisoner in a state of constant fear and terror. On the other hand, the petitioner challenges the mandatory nature of the death penalty for particular crimes, without regard to differences in the circumstances of the crimes or to mitigating circumstances, and without the possibility of recourse to an effective judicial review.

This Grenadan case is particularly compelling because it involves the murder of a mother by her son. There are indications that the mother was extremely disturbed, and there are no indicia of premeditation. In fact, the record is replete with mitigating circumstances, including evidence of the petitioner's good character. The Commission found that the mandatory death penalty for all murders, without possibility of distinction, constitutes an arbitrary deprivation of the right to life, a violation of the duty to respect the physical, mental, and moral integrity of the person and of the duty to treat detained persons with an inherent respect for human dignity. The Commission also found in the *Rudolph Baptiste Case* that Mr. Baptiste's due process rights were violated by the failure to provide access to a mechanism to apply for amnesty, pardon, or commutation of sentence, and for failure to provide legal aid to pursue a constitutional motion. The Commission also refers in detail to the violation of the right to humane treatment (Article 5(1) of the American Convention), generated by Mr. Baptiste's conditions of detention:

My cell is approximately 9 feet by 6 feet . . . and I spend approximately 23 hours a day in my cell alone. I am provided with a bed and mattress to sleep on, but there is no other furniture in my cell. I am provided with a bucket which I use as a toilet. I am permitted to slop out the contents of

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93. Case 11.743, Inter-Am. C.H.R., No. 38/00, para. 135 (2000), available at <http://www.oas.org/> (last visited Oct. 14, 2000).



the bucket once a day. Once it has been used, I am forced to endure the smell and unhygienic conditions until I am able to empty it. The lighting in my cell is insufficient. The cell has no windows and no natural lighting, and accordingly has no ventilation. Any lighting in my cell is provided by a single bulb situated in the corridor in front of my cell.<sup>94</sup>

In a case with similar issues originating in Jamaica (*Desmond McKenzie Case*),<sup>95</sup> the Commission responded to five more petitioners who challenged their death sentences. The Commission also condemned the mandatory nature of the death penalty in Jamaica,<sup>96</sup> and the lack of any individualized considerations upon imposition of sentence. Violations were also found concerning conditions of detention and numerous due process violations, including delays in bringing the petitioners promptly before a judge and proceeding to trial.<sup>97</sup>

The Commission went further than in *Baptiste* when it condemned the prison conditions as constituting more than a failure to respect the physical, mental, and moral integrity of the prisoners. The conditions under which these death row prisoners were held amounted to cruel, inhuman, and degrading treatment under Article 5.2 of the American Convention, according to the report. Specific

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94. *Id.*

95. Case 12.023, Inter-Am. C.H.R., No. 41/00, para. 52 (2000), available at <http://www.oas.org/> (last visited Oct. 14, 2000).

96. Jamaica distinguishes between capital and non-capital murders and provides for a mandatory death sentence in the case of capital murders or multiple non-capital murders.

97. Case 12.023, Inter-Am. C.H.R., No. 41/00, para. 52 (2000), available at <http://www.oas.org/> (last visited Oct. 14, 2000). Article 7.5 of the American Convention states that: "Any person detained shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to be released without prejudice to the continuation of the proceedings." American Convention, *supra* note 9, art. 7.5. The Commission's discussion of this issue refers to decisions of other international bodies, noting that: "the delays in bringing the victims before a judge in the three cases referenced above [McKenzie, Downer and Tracy, and Fletcher] are far in excess of the delays which were found to constitute violations before the United Nations Human Rights Committee and the European Court on Human Rights." Case 12.023, Inter-Am. C.H.R., No. 41/00, para. 251 (2000), available at <http://www.oas.org/> (last visited Oct. 14, 2000).

reference was made to the fact that the prisoners are held in solitary confinement, "with inadequate hygiene, ventilation and natural light, and are allowed out of their cells infrequently. Several of the victims allege to have been abused by police and prison staff or to have been provided with inadequate medical care."<sup>98</sup> These characteristics, together with the length of their detention, resulted in the Commission's determination that the prisoners had been subjected to cruel, inhuman, and degrading treatment or punishment.

Finally, international norms concerning the use of force came into play in a Commission finding against Cuba (*Armando Alejandro Jr. v. Cuba*)<sup>99</sup> based on the deaths of civilians traveling in planes shot down on February 25, 1996. The report includes a transcript of radio communications authorizing the downing of the planes, which, the Commission concluded, occurred in international airspace. The Commission determined that Cuba violated the right to life of the victims under the American Declaration<sup>100</sup> and the right to justice under that same instrument because of the failure to indemnify the surviving relatives. It urged Cuba to ratify the Protocol to the Agreement on International Civil Aviation, to which Cuba has been party since December 7, 1944.

### C. CASES ON POLITICAL RIGHTS

The Commission addressed the question of democratic representation in the case of *Andrés Aylwin Azócar y Otros v Chile*.<sup>101</sup> The former President of Chile, Andrés Aylwin, along with prominent Chilean human rights defenders, brought a successful challenge to the procedure contained in Article 45 of the Chilean Constitution. Article 45 permits certain persons to be designated "senators" or

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98. Case 12.023, Inter-Am. C.H.R., No. 41-00, para. 291 (2000), available at <http://www.oas.org/> (last visited Oct. 14, 2000).

99. Case 11.589, Inter-Am. C.H.R., No. 86-99 (1999), available at <http://www.oas.org/> (last visited Oct. 14, 2000).

100. United States' responsibility is also analyzed with regard to the American Declaration because it has not ratified the American Convention.

101. Case 11.863, Inter-Am. C.H.R., No. 137-99 (1999), available at <http://www.oas.org/> (last visited Oct. 14, 2000).

“senators-for-life,” the latter being a position held exclusively by former Chilean dictator, Augusto Pinochet. The petitioners maintained that the procedure for selecting designated senators and senators-for-life violated the right to “genuine” elections under Article 23(1)(b) of the American Convention, because it distorted popular will, thus violating the general norm of representative democracy. The petitioners also asserted that the selection scheme foreclosed any opportunity to modify this undemocratic practice established under the Chilean Constitution. Finally, they alleged a violation of Articles 23.1(c) and 24 of the American Convention, concerning the right and opportunity to have equal access to public office without discrimination. Chile countered by asserting this was a political question outside the competence of the Commission and by pointing to its efforts, albeit unsuccessful, to amend the contested constitutional provision.

The Commission’s decision was divided. The majority found that the selection process for the so-called “senators” and “senators-for-life”<sup>102</sup> violated the human right of petitioners to participate in government (Article 23) and the right to equal protection (Article 24) in the selection of senators under Chile’s bicameral arrangement for constituting its national congress. Consequently, the Commission adopted the recommendation that Chile’s internal legal order be adjusted accordingly.

The lone dissenter stated that absent “a structural model established by the State that prevents the exercise of the will of the citizenry in a clearly arbitrary manner, the Commission should, in principle, avoid making judgments about the model’s proximity to an ideal one, at least, in individual cases.”<sup>103</sup> When it is a question of the convenience of one model or another for political participation, the dissent continued, that issue is best dealt with under the Commission’s mandate to actively promote respect for human rights.<sup>104</sup>

For 1999, the Commission also wrote a special report on the situa-

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102. Augusto Pinochet is the only person who has qualified to be designated a senator-for-life. Given the peculiarities of the particular designation, one can tell that the Chilean government specifically designed it to benefit him.

103. Case 11.863, Inter-Am. C.H.R., No. 137/99, para. 4 (1999), available at <http://www.oas.org/> (last visited Oct. 14, 2000).

104. See American Convention, *supra* note 9, art. 41.

tion of human rights in Colombia, which analyzes in detail the human rights legal framework, including international humanitarian law and its application to the situation of continuing violence in that country. The report makes specific reference to the situation of the rights of internally-displaced persons, children, indigenous, and black communities. It also evaluates political rights and the actions of the justice system. Furthermore, this report provides the opportunity to explore the operation of human rights law as a guide to the human rights obligations and responsibilities of the various state and non-state actors in this conflict. It is available in full on the Commission website at <http://www.cidh.oas.org/>.

### III. NEW SCHOLARSHIP AND SOURCES ON THE INTER-AMERICAN SYSTEM

The following is a partial list of new scholarship on the Inter-American system of human rights that has come to the authors' attention:

#### A. BOOKS

Héctor Faúndez Ledesma, *EL SISTEMA INTERAMERICANO DE PROTECCIÓN DE LOS DERECHOS HUMANOS: ASPECTOS INSTITUCIONALES Y PROCESALES* (2d ed. 1999);<sup>105</sup>

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105. This publication of the Inter-American Institute of Human Rights ("Institute") is one of the most comprehensive treatises on the operation and jurisprudence of the Inter-American human rights system. This is an updated version of the 1996 edition, adding the prodigious jurisprudence of both the Commission and the Court to the textual analysis provided by Professor Ledesma. This book and many other of the Institute's books, periodicals and newsletters on the Inter-American system for human rights protection can be found and ordered from the Institute's web site at <http://www.iidh.ed.cr/front.html>. An excellent example is the recently published study of the prison systems of Central America and Panama: Anna Oehmichen and Morris Tidvall-Binz, *Sistemas Penitenciarias de Centroamerica y Panama*, published in May 1999, available at <http://www.iidh.ed.cr/act99/civil/pen1.html>. That study provides comprehensive, country-by-country data on prison populations, costs of incarceration, and percentages of inmates charged or convicted. The full text is available from the Institute, with a summary available online.

THE INTER-AMERICAN SYSTEM OF HUMAN RIGHTS (David J. Harris and Stephen Livingstone eds., 1998).<sup>106</sup>

#### B. GENERAL ARTICLES ON THE INTER-AMERICAN SYSTEM

Jorge Luis Delgado, *The Inter-American Court of Human Rights*, 5 ILSA J. INT'L & COMP. L. 541 (1999);

Ariel E. Dulitzky & Luguely Cunillera Tapia, *A Non-Governmental Perspective Regarding the International Protection of Children in the Inter-American System of Human Rights*, 8 J. TRANSNAT'L L. & POL'Y 265 (1999);

Arthur C. Helton, *Securing Refugee Protection in the Americas: The Inter-American System on Human Rights and the Rights of Asylum Seekers*, 6 SW. J. L. & TRADE AM. 129 (1999);

Chris Jochnick & Javier Mujica Petit, *Preface to the Quito Declaration on the Enforcement and Realization of Economic, Social, and Cultural Rights in Latin America and the Caribbean*, 2 YALE HUM. RTS. & DEV. L.J. 209 (1999);

Julie Lantrip, *Torture and Cruel, Inhumane and Degrading Treatment in the Jurisprudence of the Inter-American Court of Human Rights*, 5 ILSA J. INT'L & COMP. L. 551 (1999);

Ma Auxiliadora Solano Monge, *The Expert Testimony Before the Inter-American Court of Human Rights*, 5 ILSA J. INT'L & COMP. L. 567 (1999);

Jo M. Pasqualucci, *Preliminary Objections Before the Inter-American Court of Human Rights: Legitimate Issues and Illegitimate Tactics*, 40 VA. J. INT'L L. 1 (1999);

Mónica Pinto, *Fragmentation or Unification Among International*

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106. Though published in 1998, this book deserves mention here. It is a collection from various contributors, including some of the best-known authorities on the system. The treatise is another major contribution to synthesis of the Inter-American system of human rights. Together with Scott Davidson's 1997 book, *THE INTER-AMERICAN HUMAN RIGHTS SYSTEM*, the two volumes provide comprehensive treatment of the work of the Commission and Court through the dates of their publications.

*Institutions: Human Rights Tribunals*, 31 N.Y.U. J. INT'L L. & POL. 833 (1999);

Victor M. Rodríguez Rescia, *Reparations in the Inter-American System for the Protection of Human Rights*, 5 ILSA J. INT'L & COMP. L. 583 (1999);

Manuel Ventura Robles, *The Discontinuance and Acceptance of Claims in the Jurisprudence of the Inter-American Court of Human Rights*, 5 ILSA J. INT'L & COMP. L. 603 (1999);

Patricia E. Standaert, *The Friendly Settlement of Human Rights Abuses in the Americas*, 9 DUKE J. COMP. & INT'L L. 519 (1999);

Bruce Zagaris & Shaila Lakhani Ohri, *The Emergence of an International Enforcement Regime on Transnational Corruption in the Americas*, 30 LAW & POL'Y INT'L BUS. 53 (1999).

### C. HUMAN RIGHTS SCHOLARSHIP ON COUNTRIES IN THE SYSTEM

Leonard E. Birdsong, *Is There a Rush to the Death Penalty in the Caribbean: The Bahamas Says No*, 13 TEMP. INT'L & COMP. L.J. 285 (1999);

John W. Foster, *Candide at Large: Canada, Human Rights and Hemispheric "Integration,"* 62 SASK. L. REV. 595 (1999).

Janet Koven Levit, *The Constitutionalization of Human Rights in Argentina: Problem or Promise?*, 37 COLUM. J. TRANSNAT'L L. 281 (1999);

Michael Perkins, *International Human Rights and the Collegiation of Journalists: The Case of Costa Rica*, 4 COMM. L. & POL'Y 59 (1999);

Flávia Piovesan, *Integrating Gender Perspective into Brazilian Legal Doctrine and Education: Challenges and Possibilities*, 7 AM. U. J. GENDER SOC. POL'Y & L. 251 (1999);

Raúl M. Sánchez, *To the World Commission on Dams: Don't Forget the Law, and Don't Forget Human Rights – Lessons from the U.S.-Mexico Border*, 30 U. MIAMI INTER-AM. L. REV. 629 (1999);

Alberto Székely, *Democracy, Judicial Reform, the Rule of Law, and Environmental Justice in Mexico*, 21 HOUS. J. INT'L L. 385

(1999);

Alicia Ely Yamin & Ma Pilar Noriega García, *The Absence of the Rule of Law in Mexico: Diagnosis and Implications for a Mexican Transition to Democracy*, 21 LOY. L.A. INT'L & COMP. L.J. 467 (1999).

#### D. WEB SITES.

At the outset of this article, mention was made of the excellent web sites now maintained by both the Court ([http://corteidh-oea.nu.or.cr/ci/HOME\\_ING.HTM](http://corteidh-oea.nu.or.cr/ci/HOME_ING.HTM)) and the Commission (<http://www.cidh.oas.org/>). Another excellent and searchable source is the Inter-American Digest and Database, maintained by the Center for Human Rights and Humanitarian Law at American University's Washington College of Law. The home page for both the Digest and the Database is: <http://www.wcl.american.edu/pub/humright/home.html>. The Digest is a collection, in Spanish, of the Court's jurisprudence, organized by article of the Convention. Wherever the Court has mentioned or discussed a particular concept covered in the Convention in either its contentious or advisory opinions, that portion of the Court's decision is excerpted in full in the Digest. Because the Digest was meant to provide wider access to the jurisprudence of the Court, and eventually of the Commission, the current on-line edition is only available in Spanish, the first language of most advocates before the Court and Commission. An English version is contemplated in the future. The Database is a searchable collection of the jurisprudence of the Commission, taken from the Annual Reports from 1970 to 1998, and also includes most of the Commission's country reports.