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Special Coverage of the 143rd Period of Sessions of the Inter-American Commission on Human Rights

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SPECIAL COVERAGE OF THE 143RD PERIOD OF SESSIONS OF THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

DIVER FROM MISKITO COMMUNITY TESTIFIES BEFORE COMMISSION

“The Miskito people suffer from triple discrimination: they are indigenous, they are poor, and they are disabled,” said Marcia Aguiluz of the Center for Justice and International Law (CEJIL). Over forty percent of the Miskito people who work as divers in Gracias a Dios, Honduras have become disabled from decompression syndrome. The failure of the government to protect the Miskito from the hazards of diving form the basis of the petitioners’ complaint against Honduras (State) before the Inter-American Commission on Human Rights (IACHR). The Association of Disabled Honduran Miskito Divers, the Association of Miskito Women, and the Almur Nani Asla Takanka Council of Elders, along with CEJIL, collectively represented the Miskito community (petitioners) at a Commission hearing on October 24, 2011.

The Commission issued an admissibility report in November 2009 confirming the petition’s admissibility in relation to the alleged violation of rights established by the American Convention on Human Rights. Specifically alleged to have been violated were the rights to life, humane treatment, a fair trial, equal protection, and judicial protection, as well as the rights of a family, the child, the freedom from forced labor, and the state’s obligation to progressively achieve full realization of economic, cultural, and social rights.

Over seventy percent of the Miskito population is engaged in fishing and agricultural activities. The petitioners argue that a dearth of economic opportunity effectively forces the Miskito to work as divers for fishing companies that do not provide adequate training or occupational safeguards. The petitioners allege that the fishing companies make the divers dive to greater depths and remain submerged for longer periods of time than permitted under regulations designed to prevent decompression syndrome, which can result in disability or death.

The petitioners fault the State for failing to protect the divers. While Honduran law

provides a remedy for employment disputes, the petitioners argue that Honduras ineffectively pursues resolutions, and does not enforce judgments. In its admissibility report, the Commission noted that the State’s mechanisms to resolve labor disputes and exploitation allegations are inadequate in light of the Miskito people’s particular vulnerabilities, especially poverty, disability, geographic isolation, and language barriers.

At the hearing, Amistero Vans Valeriano testified about his experience as a diver and the health complications he suffers as a result. Valeriano suffers from decompression syndrome. He did not receive medical treatment until four days after his accident in September 2000, and is now unable to provide for his family. Valeriano filed a complaint with the Ministry of Labor to collect social security and other compensation, but received no response.

Ethel Deras Enamorado, the State’s Attorney General, noted that there have been important advances since Valeriano’s accident. The regional health office has expanded the number of rural health centers and employs Miskito-speaking staff. Enamorado mentioned that the Vice-Minister of Indigenous Peoples is Miskito, and that a World Bank agreement for a human capital development project for indigenous communities was recently signed. Additionally, Enamorado highlighted the development of an educational campaign, including a diving manual translated into Miskito and promoted through the radio. Finally, Enamorado noted that sixteen cabinet secretaries are creating a sustainable development plan for indigenous and afro-Honduran communities, intending to include meaningful grassroots participation.

Following the testimony, Commissioner José de Jesús Orozco Henríquez asked both parties to identify public policies to prevent diving accidents and to explore the possibility of a friendly settlement in the case. Both parties agreed that official mechanisms exist; the problem, according to CEJIL, is that they are unenforced. Both parties expressed their amenity to a friendly

settlement, though CEJIL emphasized that the petitioners are seeking a comprehensive solution to the problem, rather than isolated policies.

Commissioner Felipe González Morales asked both sides to elaborate on the State’s duty to develop policies toward the progressive realization of economic, social, and cultural rights. Commissioner Luz Patricia Mejía Guerrero and the Commission’s Executive Secretary, Elizabeth Abi-Mershed, asked the petitioners to explain how diving constitutes forced labor, and what immediate actions are available to create alternative economic opportunities. CEJIL responded that because there is no alternative economic opportunity in the region, and the State does not enforce its safety norms, the Miskito are forced to suffer the inevitable injuries. She urged the state to prioritize enforcing existing regulations over developing alternative opportunities, which take more time. Enamorado claimed that the blame lies with the fishing companies because the State already fulfills its duty by performing worksite inspections. Enamorado also suggested that some divers are responsible for their own injuries by not taking all possible precautions or ignoring existing standards. Commissioner Orozco concluded the hearing by clarifying that while the Commission prefers a friendly settlement, it will issue a report if such a settlement does not occur.

Lauren Nussbaum, a J.D. candidate at the American University Washington College of Law, covered this hearing for the Human Rights Brief.

SEXUAL VIOLENCE IN EDUCATIONAL INSTITUTIONS IN THE AMERICAS

On Monday, October 24, 2011 the Inter-American Commission on Human Rights (IACHR) held a thematic hearing regarding the human rights situation of children and youth who have or are experiencing sexual violence in primary and secondary educational institutions. Petitioners included María Alejandra Cardenas of Centro de Derechos Reproductivos, Jorge Luis Silva Mendez of Instituto Tecnológico Autónomo de México (ITAM), Ramiro Barriga of

Fundacion para la defensa y la restitution de los Derechos Humanos (FUNDERES), and Katherine Romero of Women's Link Worldwide.

The petitioners contended that sexual abuse is an ongoing threat to the safety, health, and development of children throughout Latin America. Article 19 of the American Convention on Human Rights addresses the rights of the child. Overall, petitioners found that teachers, administrators, and other adults in the school systems, such as cleaning staff, who have direct access to children, are most commonly the perpetrators of sexual abuse. They presented findings from a report prepared jointly by the petitioning organizations in which they found three structural risk factors that enable or facilitate the sexual violence in the four countries studied – Mexico, Ecuador, Bolivia, and Colombia.

The first factor is the social and physical nature of schools where relationships based on hierarchy and power make children, particularly young girls, vulnerable to abuse. The petitioners stressed that this factor is augmented by the inadequate design of schools, particularly where supervision or surveillance is lacking.

Next identified was the concealment and tolerance in the general management of educational systems, where instead of being made available to the authorities, the perpetrator is often transferred to a different institution within the system. The petitioners hypothesized that perpetrators were not often brought to justice in these situations due to difficulties in implementing international norms against sexual violence into penal codes, a problem existing on a national level in several countries, but also due to fears that the educational institution or system would develop an unfavorable reputation.

Finally, the third factor mentioned was the lack of criminal charges and administrative directives, which coupled with high bureaucracy costs, constitute obstacles in access to justice. When cases arise, school officials try to negotiate internally and sometimes come to financial arrangements with the victims. Certain conditions, according to the petitioners, make children and youth even more vulnerable to sexual violence, gender, age, maturity level, ethnicity, indigenous status, migration, sexual orientation, language spoken, and disabilities.

To exemplify the issue, Petitioner Romero highlighted the case of Patricia Flores, a Bolivian girl who was raped and killed in her school in 1999. The case went through the Bolivian judicial system, but the Supreme Court of Bolivia has since ordered that it start at the initial phase because the prime suspect was released. Romero insisted that, furthermore, all criminal courts have declined to hear the case without justification.

At the end of the hearing, Commissioner Pinheiro inquired as to why the petitioners believed there was a delay in implementing norms against sexual violence, where the country has compromised itself. Commissioners Mejía and Orozco requested that petitioners elaborate on a few practices and recommendations that would prevent, improve, and prosecute these types of cases more effectively. In responding to these questions, Petitioners Cardenas and Romero emphasized that what is principally lacking is a registry or other database where such information can be recorded so as to gauge with more specificity where and what types of abuse are prevalent on a national level. To date, at least in the countries studied, there was no mechanism to record data, and the best tool to investigate was through media coverage. Petitioner Silva underscored the need for training and sensitization of school and state officials and likewise, earlier sexual education programs as well as other sessions to educate students on their rights with regard to sexual harassment and violence. On this last point, Petitioner Barriga advised that the measure should take into consideration cultural and social factors on a local level that could affect the success of such training.

Leah Chavla, a J.D. candidate at the American University Washington College of Law and a guest writer for the Human Rights Brief, covered this hearing.

JUVENILE CRIMINAL JUSTICE SYSTEMS AND HUMAN RIGHTS IN THE AMERICAS

“The situation of our continent is regressive; shameful. We conquered our democracies, but our children continue to be treated authoritatively,” said Commissioner Paulo Sérgio Pinheiro in a thematic hearing on Criminal Juvenile Justice held by the Inter-American Commission on Human Rights (IACHR) on Thursday 27, 2011. The petitioner was the Latin American branch of Defense for Children International (DNI),

a non-governmental organization dedicated to the promotion and protection of children's rights, with a particular focus on juvenile justice. The purpose of the hearing was to present the findings of a recent investigation conducted by DNI and to request that the IACHR take an active role in promoting progressive changes in juvenile justice systems.

A hearing on this issue has been anticipated because, as the DNI representatives and Commissioners Pinheiro and Rodrigo Escobar Gil noted, this report comes as an important compliment to a recent report on “Juvenile Justice and Human Rights in the Americas” published by the IACHR on July 13, 2011. According to this report, member states to the Organization of American States (OAS) are in grave incompliance of international standards, in particular because their juvenile justice systems are “characterized by discrimination, violence, a lack of specialization, and the abuse of measures involving deprivation of liberty.” Likewise, the report condemned the regressive policies being implemented in many countries.

DNI explained that their report consisted of a study conducted in Argentina, Bolivia, Costa Rica, Colombia, Ecuador, Paraguay, and Uruguay, where 350 detained children were interviewed. The conditions of their detention and the identification of violations of children's rights were reviewed in accordance with the standards laid down by the UN Convention on the Rights of the Child, Inter-American Court Advisory Opinion 17, General Comment No. 10, the Beijing Rules, and the IACHR report on Juvenile Justice. They concluded that the situation is critical. The data collected showed that more than 50% of the children detained were convicted for crimes against property. This data evidences a violation of a fundamental principle in juvenile justice – deprivation of liberty should be applicable only as a last resource (Beijing Rule 19). Moreover, more than 60% of the children were detained in inhumane conditions, including overcrowding of cells, unhygienic facilities and lack of privacy; and at least 37% testified to being victims of acts of violence, but not knowing how to denounce these events. Furthermore, although the main objective of a juvenile justice system should be the education of children for their effective reincorporation in society (Beijing Rule 1), the report shows how states fail to implement policies

appropriate to this end. In fact, only 6% of the children have come out of the detention facilities for recreational activities, and only 6% have done it for continuing their formal education.

According to the petitioners, the problem is not a lack of legislation recognizing these principles, but rather, a lack of political will to implement them and design policies to make them effective. In the petitioners' views, children are treated as adults and are subjected to a criminal system directed to adults, contradicting international human rights standards that demand a specialized approach. Hence, DNI requested the IACHR publicly recognize that deprivation of liberty can only be used as a last resort measure and to conduct more *in-situ* visits as a follow-up mechanism. Furthermore, they requested that the IACHR call on the governments of Bolivia, Paraguay, and Uruguay to revise their legislation and to stop the adoption of current initiatives that will further affect the situation of children and that represent a regression in human rights standards contrary to international law. These initiatives include lowering the age for criminal liability, increasing the sentences, and keeping a criminal record that can be used in courts.

Commissioners Pinheiro and Escobar, in their respective positions as Special Rapporteurs on the Rights of Children and on the Rights of Persons Deprived of Liberty, complimented the report and highlighted its consistency with the IACHR position. They affirmed that deprivation of liberty should be a last resort measure, and that governments should move towards completely abolishing these measures for children.

The Commissioners condemned the many regressive initiatives being promoted in the region. In particular, Commissioner Escobar agreed that current detention facilities operate as regular prisons but with a different name, and that, in general, juvenile justice systems lack the specialization that is required by human rights standards. The hearing ended with a commitment from the Commissioners to honor the petitions and to continue working to generate debate and raising awareness on the issue.

Maria Leoni, an LL.M candidate in the International Legal Studies Program at the American University Washington College of Law and a guest writer for the Human Rights Brief, covered this hearing.

CITIZEN SECURITY AND HUMAN RIGHTS IN MEXICO

A civil society representative began a hearing at the Inter-American Commission on Human Rights on October 27, 2011 by describing citizen security in Mexico as a national emergency of violence and impunity. Julia Alonzo, a mother whose child disappeared on January 12, 2008, spoke thereafter. She described how she has searched all over for her son. They lived in Acapulco, but she had to move after receiving threats because she could not seek protection from the State. She said she came to Washington, D.C. because she does not know any other way to find her son.

Juan Sicilia, whose 24 year-old son, Juan Francisco Sicilia, was assassinated in the city of Cuernavaca, expressed his concern about the corruption in Mexico and the 98% of crimes in Mexico that end in impunity. Mr. Sicilia has launched a campaign for no more blood and for peace with justice and dignity. The representatives from civil society stated that the government office for attention to victims of crime, *Procuraduría Social para Atención a Víctimas*, is not doing enough, and that the inaction and inefficiency of the government leads to more disappearances each day. Carla Espinoza, director of the Center for Human Rights in the Americas of the International Human Rights Institute of DePaul University, introduced a few representatives who spoke to the issue of forced disappearances.

The delegation from Mexico spoke to the petitioners and said that combating violence is a priority for Mexico. The first government representative reported that the United Nations Working Group on Enforced or Involuntary Disappearances visited Mexico in March 2011 and will produce a report very soon. The delegation then showed a short video as a summary of President Felipe Calderon's dialogue with the movement for peace. In the video, the President ended with the famous statement attributed to pastor Martin Niemoeller about inaction, and said that his government will continue to act, and to change when they make errors.

The Mexican government representatives continued by enumerating some of the changes they have made and by saying that security is a precondition for the full realization of human rights of its citizens. The government will continue to confront the

problems arising from narcotrafficking and juvenile delinquency. One of the representatives said the government's actions have been the consequence, but not the cause, of the violence. However, the representative recognized that the government needs to work to enforce its institutions, and it values the participation of civil society.

Commissioner Paulo Sergio Pinheiro asked if the government could comment on Mexico's office for attention to victims of crime. Commissioner Felipe Gonzalez asked how the Mexican government is addressing the differences among states with regards to impunity, kidnappings, murders, etc. Commissioner Rodrigo Escobar Gil discussed his visit to Mexico and real humanitarian tragedy of the massive number of kidnappings of migrants, and asked if the government is addressing the needs of the families of victims of crime, and about what it is doing to improve the investigation of crimes.

The government responded by saying that the *Procuraduría Social para Atención a Víctimas* has received resources to attend to victims in the future and they are working to help victims and their families by trying to find persons who have disappeared. In response to the question from Commissioner Felipe Gonzalez about putting the federal and state efforts in sync, the government representative said that in Mexico there are approximately 430,000 police officers, but of those, at the federal level there are just approximately 34,438 officers. In regards to the commission of crimes, in 2010, 92.7% of crimes were local, and just 7.3% were federal crimes. The last government representative said that a new law was passed on February 27, 2011 to prevent and to sanction crimes in matters of abduction.

The civil society representatives responded by saying that they are asking for more than a symbolic presence of citizens and victims in the government's efforts. The representative also said that there should be more investigation of the money transfers being made to kidnappers. He ended by emphasizing that Mexico has the information they need to access this financial data and combat this phenomenon.

Anne Schaufele, a J.D. candidate at the American University Washington College of Law, covered this hearing for the Human Rights Brief.