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News from the Inter-American System

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NEWS FROM THE INTER-AMERICAN SYSTEM

by Nadia Ezzelarab

The Inter-American Commission on Human Rights

In its 90th session, September 11-22, 1995, the Inter-American Commission on Human Rights heard from government representatives, NGOs, and individuals regarding the observance and protection of human rights. Testimony was presented on the general situation of human rights and basic liberties in the different countries of the hemisphere and on individual cases currently before the Commission.

The Commission also approved the preliminary draft Inter-American Declaration of the Rights of Indigenous Peoples. This document will be sent to the governments of OAS member states, indigenous entities, and interested organizations for comments and observations. The final draft Declaration will be presented to the General Assembly of the OAS at its next regular session.

It was further agreed that reports will be written on the situation of migrant workers and children in the hemisphere. The Commission expects to present progress reports on women's rights and the state of prisons in the Americas at the next regular session of the General Assembly.

The Commission expressed its concern about the increase of violence in the Uraba area of Colombia and made an urgent appeal for peace and comity, to prevent violations of the right to life.

Finally, the Commission approved certain amendments to Articles 12, 13, 19, and 47 of its Regulations.

The Inter-American Court of Human Rights

The XXXIIth Session of the Inter-American Court of Human Rights was held in San Jose, Costa Rica, from September 11-23, 1995. During this session the Court considered, *inter alia*, the following matters:

1. *Paniagua, et al. (Panel Blanca) v. Guatemala* *

• **Stage of the Proceedings:** This case involves allegations that agents of the Guatemalan Treasury Police kidnaped and murdered several civilians. Guatemala made preliminary objec-

tions that the Commission failed to bring the case before the Court in a timely and appropriate manner, which the Commission refuted. A decision on this contention has not yet been issued.

2. *Castillo Páez v. Peru* *

• **Stage of the Proceedings:** The case involves an alleged forced disappearance by agents of the Peruvian National Police. Peru made preliminary objections that domestic remedies have not been exhausted and that the petition is inadmissible. The Commission requested the Court to declare that Peru violated its obligations under the American Convention on Human Rights. More specifically, the Commission alleges that Peru violated the right to life, right to humane treatment, right to personal liberty, right to fair trial, and right to juridical protection. The Commission also requested the Court to order the Government of Peru to investigate, identify, try and punish those responsible; to locate and deliver Mr. Castillo-Páez's remains to his family; and to pay full material and emotional reparations to the victim's family. A decision on this case has not yet been issued.

3. *Loayza Tamayo v. Peru* *

• **Stage of the Proceedings:** The Government of Peru made the preliminary objection that domestic remedies have not been exhausted. The petition alleges that Ms. Loayza Tamayo was illegally deprived of her liberty, tortured and treated in a cruel, inhuman, and degrading manner and that Peru violated the right to fair trial and double jeopardy. The Commission considers that Peru also violated certain recommendations previously offered by the Commission according to Article 51(2). The Commission requested the Court to order Peru to pay full reparations to the plaintiff for the damages suffered and to pass a decree granting her immediate freedom. The Court has not yet rendered a decision in this case.

4. *Garrido, et al. v. Argentina*

• **Facts:** Adolfo Garrido and Raul Baigorria were arrested by the Provincial

Police of Mendoza on April 28, 1990. Their whereabouts are still unknown.

• **Stage of the Proceedings:** Oral hearings were not held in this case. Argentina accepted the facts alleged but rejected liability. The case eventually will be tried on the merits.

5. *Blake, et al. v. Guatemala*

• **Facts:** Plaintiffs alleged that agents of the Guatemalan State kidnaped both Mr. Blake and Mr. Davis. They further asserted that the Government did not provide effective judicial recourse and continuously obstructed the enforcement of justice, with the goal of concealing Mr. Blake's disappearance.

• **Stage of the Proceedings:** The Commission declared that Guatemala violated provisions of the American Convention, namely the rights to life, personal liberty, fair trial, judicial protection, freedom of thought and expression, and freedom of movement and residence. The Commission also held that Guatemala had failed to uphold its obligation to respect these rights. The Commission requested the Court to order the Government of Guatemala to pay full reparation to Mr. Blake's relatives for the grave moral and material damages they have suffered and to pay the costs of the judicial proceedings. The Court ratified certain provisional measures to be taken by Guatemala in order to protect a key witness and his relatives.

6. *Reparations in the case: Indalecio Guerrero et al. (El Amparo) v. Venezuela* *

• **Stage of the Proceedings:** The Venezuelan Government indicated that it does not contest the facts of the case and accepts responsibility for the claimed violations. The Court decided that Venezuela was liable to repair the damages and pay fair compensation to the surviving victims and next-of-kin. In line with the Court's previous jurisprudence, "fair compensation" should include compensation for a State's failure to investigate, and, in relevant cases, criminally prosecute and punish alleged perpetrators. Since no agree-

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reluctant to adopt such language, Ambassador Ferraro, at the request of the Task Force, convinced the legal advisor to not oppose its adoption.

Gilbert views this as one of the most noteworthy achievements of the Task Force. "While the right of refugee and displaced women to a safe and voluntary return to their place of origin and to protection after return must be ensured, this right is meaningful only if the principles of *non-refoulement*, or non-return, are fully respected and strictly observed." The team also was successful in lobbying for language in the Platform for Action urging states to apply the Refugee Convention so as to incorporate the particular experiences of women subject to gender-related persecution.

In spite of laudable efforts by Ambassador Ragne Lund and vigorous lobbying by the Task Force and by



Photo Courtesy of Gail Lerner

Participants take informal break to discuss issues on last day of Beijing Conference.



Photo Courtesy of Gail Lerner

Migrant, Refugee, and Displaced Women and their advocates give a press conference at the International Conference Center, Beijing.

women's groups from Africa and Latin America, the agreements reached in August could not be undone. Nonetheless, thanks to Ambassador Lund's herculean efforts, in a section which previously had applied only to refugees, the document, reaffirming the principle of burden-sharing, calls upon states and intergovernmental organizations to "ensure" that the international community provide assistance to refugee, internally displaced and other displaced women and (in language suggesting the right of the internally displaced to international protection) to pro-

vide *protection and assistance* consistent with the human rights principle of non-discrimination. Gilbert advises, however, that work on the rights of internally displaced persons did not stop at the conference. "Now that the conference is over," she says, "attempts must be made to enforce these principles, both at the international and the domestic level. Although the Platform is not binding as a treaty, it has persuasive powers, and States, having reached a consensus at an international forum, can still be held politically accountable. This is a gradual process, but now we've developed a large network of legal experts and women's advocates united in working on behalf of refugee and internally displaced women around the world." ☺

ILO, continued from page 4

publicize governmental infractions. The ILO may not represent the consummate vehicle for promoting and protecting human rights, but U.S. NGOs are likely to find it an effective medium through which to advance their agendas. American human rights groups generally have not resorted to the ILO supervisory machinery but, according to WCL Professor Robert Goldman, "it may be time for a change, since it is critical for such organizations to be aware of all available means by which enforcement of human rights standards is possible." As the record of the Committee on Freedom of Association demonstrates, it has indeed been effective, despite the reality that its power is based upon its investigative ability to shed light on governmental infractions. ☺

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ment had been reached by the parties as to form and amount of reparations, the Court undertook to determine the scope of reparations and amount of indemnifications, as well as procedural costs and fees.

7. Provisional Measures in the case: Carpio Nicolle v. Guatemala

- **Facts:** In 1993, Jorge Carpio Nicolle, a candidate for the Guatemalan presidency, was assassinated.
- **Stage of the Proceedings:** The Court ratified urgent measures requested by the Commission for the protection of certain witnesses and a prosecutor. ☺

* The facts of this case can be found in the Winter 1995 issue of *The Human Rights Brief*.

