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the extent that this standard becomes established, the Commission may find itself in a difficult position. In the majority of cases considered by the Commission, evidence is generally in the hands of the government. Therefore,

reaching the burden of proof required by the Court could prove very difficult. Professor Grossman strongly criticized the Court's decision. He asserted that the burden of proof required by the Court was "impossible to satisfy," particularly as victims' families typically do not have

access to the victims' bodies. ☉

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Grossman Criticizes Recent Court Decisions Involving Suriname

by Claudia Martin and Françoise Roth

Professor Claudio Grossman, a co-director of the Center for Human Rights and Humanitarian Law, was the lawyer for the victims in both cases against the Suriname government. He represented the victims on behalf of the center and the International Human Rights Law Group. Grossman gave us his own impressions on the two decisions.

Q: Why did the center decide to take these cases over?

A: There were different reasons. First, I speak Dutch and I knew the human rights situation in Suriname as well as the victims. On the other hand, the case of *Aloboetoe* was challenging because it raised the interesting questions of cultural diversity and the rights of the indigenous populations.

Q: What is your opinion of the decision rendered in the *Aloboetoe et al.* case?

A: The fact that the Court recognized the responsibility of Suriname is significant because the Bushnegroes [Maroons] are considered second-class citizens there. It was important for civil society to be confronted with them. The decision gave them some rights. The Court awarded nonmonetary damages as well as \$500,000 as material compensation which will alleviate their economic situation. However, the Court was shy in not recognizing moral damages for the tribe as a whole. I think that it reflects a lack of sensitivity for the group's rights. The Court should also have ordered Suriname to investigate the killings and to punish those found guilty. It is worth noting that under the American Convention, Suriname still has the obligation to investigate this human rights violation.

As to the legal expenses, the Court made a serious mistake in not awarding them. I acted as a pro bono attorney and all the expenses were paid by my law school and the Law Group. This decision

created problems for the victims. But we will continue to litigate this matter in the future.

Q: What are your observations of the decision in the *Gangaram-Panday* case?

A: As you know, the Court did not establish the responsibility of Suriname in the death of Mr. Gangaram-Panday. I believe this decision will create not precedent, but reaction. The Court should require reasonable standards of proof such as circumstantial evidence; otherwise, it will be difficult to prove any human right violations in the future.

Q: So, do you think the Court required a higher standards of proof?

A: Actually, the Court asked the victims to prove the impossible. It requested them to demonstrate that Asok Gangaram Panday did not hang himself; however, the family [did] not have access to his body until four days later. Therefore, the evidence was not in their hands. I believe the *onus probandi* should have been on the government to demonstrate that he committed suicide.

On the other hand, the doctors who made the autopsies and a government witness, testified in cross-examination that there was blood in the victim's testicles as a result of a blow applied shortly before the victim's death. I think that if you considered the circumstances of Gangaram Panday's illegal detention and subsequent death, it is very likely that he was subjected to torture.

Q: What could happen if the approach in *Gangaram-Panday* becomes a general trend? In other words, how can the Commission reach the standard of evidence required in cases in which the proof is in the hands of the government?

A: We hope that it will not become a general trend. Moreover, as you know, the decision was a divided one. In fact, three judges support a different position as to

the responsibility of Suriname in the victim's death.

Q: Will your election as a member of the Inter-American Commission affect the Center's participation in other cases before the Court?

A: I believe the Center and the International Human Rights Clinic must be involved in new cases. However, I will not participate in the decisions of those before the Inter-American Commission because there is a conflict of interest. I think that the fact that I am a member of the Commission can benefit the students at WCL in many ways. Among others, I am in charge of a project concerning women's issues and I will need the assistance of some students. Furthermore, in the Commission, I want to support my decisions with universal precedents; therefore, I will need the assistance of students to prepare some comparative studies. ☉



Claudio Grossman arguing a case before the Inter-American Court of Human Rights in Costa Rica.