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Inter-American Commission on Human Rights (Office of the Special Rapporteur for Freedom of Expression)

Right to the Truth [2003–4]

The group of cases in the following section deal with the "right to truth," a concept that has been developing in the inter-American system in recent years. The Commission first began to understand this right as the right of families to know the fate of their loved ones, a right that flows from the States' obligation under Article 25 to provide victims or their next-of-kin simple and prompt legal recourse for violations of fundamental rights.[1] The understanding of this right has evolved, and it is now considered, at least by the Commission, that the right to the truth is a right that belongs both to victims and family members and to society as a whole. Under this current understanding, the right to the truth is based not only in Article 25, but also in Articles 1(1), 8, and 13 of the Convention.[2]

The Commission's 1998 report in a group of cases from Chile marks the first time the Commission considered Article 13 in the context of the right to the truth, as well as the first time the Commission recognized that the right to truth belongs to members of society at large as well as to the families of victims of human rights violations.[3] In this group of cases, the petitioners asserted that the continued application of the amnesty law in Chile violated the rights of victims of the repression during the Pinochet regime. According to the law, crimes committed between 1973 and 1978 were pardoned, hindering the investigation and punishment of crimes and allowing perpetrators to go unpunished. Among other rights, the Commission found that the State had violated the right of the victims' families and of society to know the truth about what occurred in Chile. The Commission noted that this obligation stems from Articles 1(1), 8, 25, and 13 of the Convention. Additionally, the Commission stated that when amnesties are enforced, States must adopt the measures necessary to establish the facts and identify those responsible. The Commission also maintained that "[e]very society has the inalienable right to know the truth about past events, as well as the motives and circumstances in which aberrant crimes came to be committed, in order to prevent repetitions of such acts in the future." [4] Further, the Commission stated that "[t]he interpretation of the generic obligations established in Article 1.1 made by the Court in the Castillo Paéz Case ... allows for the conclusion that the 'right to truth' is a basic and indispensable consequence for every State Party." [5]

The Commission again addressed in the context of amnesty laws in a 1999 case from El Salvador.[6] The petitioners alleged that several farmers were arrested and tortured by units of the Salvadoran Army in the context of a period of domestic armed conflict. Two of the detainees allegedly died as a result of the torture. After a peace agreement was signed in 1992, a Truth Commission was established to investigate serious acts of violence that occurred in the context of the armed conflict and to report these findings to the public. In 1993, the State approved an amnesty law, which nullified the recommendations of the Truth Commission, and eliminated the possibility of investigations and legal sanctions against the perpetrators of unlawful violence. The Commission found that the State had violated the petitioners' and the right of society at large to know the truth about the human rights violations that occurred in El Salvador and the identity of those who perpetrated them. As in the previous case, the Commission stated that the right to know the truth arises out of Articles 1(1), 8, 25, and 13 of the Convention, although it did not expressly find a violation of Article

13. Moreover, the Commission maintained that the right to truth is a “collective right which allows a society to gain access to information essential to the development of democratic systems, and also an individual right for the relatives of the victims, allowing for a form of reparation, especially in cases where the Amnesty Law is enforced. The American Convention protects the right to gain access to and obtain information, especially in the cases of the disappeared, in regard to which the Court and the Commission have established that the State is obligated to determine the person’s whereabouts.”[7]

The Commission found a violation of Article 13 based on the right to the truth in another 1999 case from El Salvador.[8] In that case, six Jesuit priests, their cook, and her daughter were extra-judicially executed by military personnel. The murders were blamed on an armed dissident group, however, a report by the Truth Commission indicated that members of the armed forces were responsible for the killings. The State convicted two members of the armed forces, but later released them after the passage of an amnesty law. In finding a violation of the right to the truth, the Commission noted the State's duty to the victims' relatives and to society as a whole to provide information regarding the circumstances that gave rise to the serious human rights violations and the identities of the perpetrators and further stating that this right arises under Articles 1(1), 8(1), 25, and 13. For the first time in this type of case, the Commission expressly stated that the State had violated Article 13, noting that "Article 13 protects the right of access to information.[9]

In the 2000 case of the extra-judicial execution of Monsignor Oscar Romero in El Salvador, the Commission reiterated its position that the right to the truth stems in part from Article 13.[10] Monsignor Oscar Romero was allegedly murdered by state agents operating as part of death squads. The State subsequently failed to investigate the circumstances surrounding his death and bring the perpetrators to justice. The Commission held that the State was responsible for violating its duty to provide society and the victim’s family with the truth about the scope of the violations as well as the identities of those who participated in them. As in previous cases, the Commission recognized that the State’s obligations to the victims’ direct relatives and society at large stem from Articles 1(1), 8, 25, and 13 of the Convention. Although the Commission did not directly find a violation of Article 13, it drew from Article 13 in its analysis of the State’s duty to reveal the truth. The Commission asserted that Article 13 protects society’s right to seek and receive information. The Commission further maintained that the right to the truth is part of the family’s right to reparation.

The issue of the right to the truth has subsequently arisen in two cases considered by the Inter-American Court.[11] The *Bámaca Velásquez* Case dealt with the disappearance of Efraín Bámaca Velásquez, a leader of a guerrilla group in Guatemala at the hands of the Guatemalan Army. The *Barrios Altos* Case involved a shooting ambush in a Lima, Peru apartment building that left 15 dead and four wounded. The shootings were allegedly perpetrated by members of the "Colina Group," a "death squadron" of the Peruvian Army's intelligence services. In both cases, the Court found that the right of the victims or their next-of-kin to know the truth about the alleged human rights violations had been violated, but that it was unnecessary to consider this as a separate issue since in both cases the issue was addressed as part of the violation of Articles 8 and 25.

Index of Cases

Caso 10.948, Report N° 13/96, El Salvador, March 1, 1996.

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Caso 11.221, Report N° 3/98, Colombia, Tarcisio Medina Charry, April 7, 1998.

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Caso 11.610, Report N° 49/99, México, Loren Laroye Riebe Star, Jorge Alberto Barón Guttlein, and Rodolfo Izal Elorz, April 13, 1999.

Caso 10.325, Report N° 2/96, Grenada, Steve Clark et al, March 1, 1996.

Caso 11.230, Report N° 11/96, Chile, Francisco Martorell, May 3, 1996.

Caso 11.012, Report N° 22/94, Argentina, Horacio Verbitsky, September, 20 1994

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Caso 10.480, Report N° 1/99, El Salvador, Lucio Parada Cea, Héctor Joaquín Miranda Marroquín, Fausto García Funes, Andrés Hernández Carpio, Jose Catalino Meléndez and Carlos Antonio Martínez, January 27, 1999.

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Caso 12.213, Report N° 73/03, Brasil, Aristeu Guida Da Silva, October 22, 2003 (Admisibility).

[1] See Case 10.580, Report N° 10/95, Ecuador, Manuel Bolaños, September 12, 1995. The first case in which the Commission addressed the right to truth was the 1995 case of the disappearance of Manuel Bolaños in Ecuador. The Ecuadorian Marines allegedly took Manuel Bolaños into custody to review his identification documents. Mr. Bolaños was never seen or heard from again. After Mr. Bolaños’ disappearance, his family presented habeas corpus petitions before the appropriate courts. The habeas corpus petitions were rejected. Nearly two years after Mr. Bolaños disappeared, his family received news that he had died while in the custody of the Marines and that an investigation into his death was under way. However, the government never established the responsibility of those who allegedly tortured and killed Mr. Bolaños. The Commission found a number of violations in the case, among these the violation of the family's right to the truth about what happened to Manuel Bolaños, the circumstances of his detention and death, and the location of his remains. This right, the Commission stated, arises from the State’s obligation to “use all means at its disposal to carry out a serious investigation of violations committed within its jurisdiction to identify those responsible.” *Id.* at “Analysis”, Section II, at para. 45, citing Velásquez Rodríguez, Judgment of July 29, 1988 at para. 166. The Commission asserted that because the courts initially failed to investigate into the disappearance of Mr. Bolaños, because the State failed to inform Mr. Bolaños’ family of his death or the location of his remains, and because of the delay in the investigation that finally did occur, the State violated the family’s right to justice and right to know the truth.

[2] In some cases, the Commission has not addressed Article 13 in the context of right to truth cases. See, eg. Case 10.258, Report N° 1/97, Ecuador, Manuel García Franco, March 12, 1997; Case 10.606, Report N° 11/98, Guatemala, Samuel de la Cruz Gómez, April 7, 1998; Case 11.275, Report N° 140/99, Guatemala, Francisco Guarcas Cipriano, December 21, 1999; Cases 10.588 (Isabela Velásquez and Francisco Velásquez), 10.608 (Ronal Homero Nota *et al.*), 10.796 (Eleodoro Polanco Arévalo), 10.856 (Adolfo René and Luis Pacheco del Cid), and 10.921 (Nicolás Matoj *et al.*), Report N° 40/00, Guatemala, April 13, 2000. An examination of the facts of all of the various right to truth cases seems to indicate that the Commission considers Article 13 to be particularly important in cases dealing with amnesty laws. This is due to the fact that when an amnesty law is in effect, there is no opportunity for judicial action against the perpetrators of the crime and information becomes the sole means by which family members can achieve some degree of reparation. Moreover, information is essential in these cases because members of society must be aware of the abuses that have taken place in order to monitor and prevent similar abuses in the future.

[3] Cases 11.505, 11.532, 11.541, 11.546, 11.549, 11.569, 11.572, 11.573, 11.583, 11.595, 11.657, 11.705, Report N° 25/98, Chile, Alfonso René Chanfeau Orayce, April 7, 1998.

[4] *Id.* para. 92, citing IACHR, Annual Report, 1985-86 at p. 193.

[5] *Id.* para. 87, citing Castillo Paéz, Judgment of November 3, 1997 at para. 86.

[6] Case 10.480, Report N° 1/99, El Salvador, Lucio Parada Cea, Héctor Joaquín Miranda Marroquín, Fausto García Funes, Andrés Hernández Carpio, Jose Catalino Meléndez y Carlos Antonio Martínez, January 27, 1999.

[7] *Id.* para. 151.

[8] Case 10.488, Report N° 136/99, El Salvador, Ignacio Ellacuría, December 22, 1999.

[9] *Id.* para 224.

[10] Case 11.481, Report N° 37/00, El Salvador, Monsignor Oscar Arnulfo Romero y Galdámez, April 13, 2000.

[11] Bámaca Velásquez Case, Judgment of November 25, 2000; Barrios Altos Case, Judgment of March 14, 2001.