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1630 Connecticut Ave., NW, Suite 555
Washington, DC 20009-1053

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In addition to CEJIL's staff, we would like to express our gratitude for the important contribution made by our interns and volunteers who have donated their time and energy to our work. Attorney Isabel Ricupero serves as the CEJIL representative before the United Nations in Geneva. Daniel Jean Pierre, Kenneth Figueroa, Daniel Noriega Leilan, Olivia Furst Bastro, Courtney Lolla, Jane Korach, Silvia Lemgruber, Naomi Onaga, Bianca la Neve, Erika Serran, Maria Silvia Emanuelli, Alejandra Ancheita, Digna Ochoa, Monica Mecca Emma McClandish, Paula Forrero, Veronica Hinestroza, Fernando Doz Costa, Vesna Matulie, Pablo Fernandez, Sarah Aird, Regina Torres, Marcos Baras, Valentina Garcia Salemi, Lorena Pinheiro, Juan Manuel Marchan. Also, the following individuals served as interns in CEJIL during the time when this gazette was produced: Sonia Cabrera (Red de Apoyo, Venezuela) and Maria Primi.

EDITORIAL

ECONOMIC, SOCIAL, AND CULTURAL RIGHTS IN THE INTER-AMERICAN SYSTEM

Economic inequality, poverty, lack of access to education and health care for children and youth, malnutrition and poor working conditions are only a few of the human rights violations which pervade the Americas. The victims of these violations often belong to the poorest and most vulnerable social groups: indigenous peoples, street children, young people of marginalized neighborhoods, etc.

Despite the prevalence of these violations, the Inter-American system has historically focused on the defense of civil and political rights such as the right to life, integrity, liberty, justice, and equality. However, both the Inter-American Commission of Human Rights ("the Commission") and the Inter-American Court of Human Rights ("the Court") have recognized economic, social and cultural rights as inalienable. In 1982 the Commission endorsed the adoption of an Additional Protocol to the American Convention of Human Rights: the Additional Protocol to the American Convention in the matter of Economic, Social and Cultural Rights ("Protocol of San Salvador"). This instrument was adopted by the OAS General Assembly in San Salvador, El Salvador on November 17, 1988 and entered into force November 1999. In addition, recent decisions issued by the system's organs have furthered progressive jurisprudence in this area of international law. For example, the Commission is establishing standards in the application of economic, social, and cultural rights through friendly settlements and precautionary measures.

The normative framework of the Inter-American system provides for the protection of a range of economic, social, and cultural rights. The American Declaration of the Rights and Duties of Man, which is applicable to every State in the Americas, recognizes the right to education and health. Echoing the Universal Declaration of Human Rights, the American Convention on Human Rights ("the Convention") affirms in its preamble the following: "the ideal of free men enjoying freedom from fear and want can be achieved only if conditions are created whereby everyone may enjoy his economic, social and cultural rights, as well as his civil and political rights". Moreover, Article 26 (progressive development and means for the full enjoyment of these rights) with reference to Articles 1 (obligation to respect rights), 2 (adoption of measures to make them effective), 8 and 25 (due process and judicial protection), 19 (rights of the child), 16 (freedom of association) and 24 (right to equal protection before the law) of the Convention contemplate the protection of economic, social, and cultural rights. Despite its limited supervisory role (limited to receiving information and considering individual requests with respect to the right to education and only some aspects of labor rights), the Protocol of San Salvador provides a normative framework which defines the scope of other economic, social and cultural rights, such as article 7 (just, equitable, and satisfactory work conditions), 9 (right to social security) and 11 (right to a healthy environment).

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Twenty years after the murder of Monsignor Romero, the Commission demands that El Salvador end impunity

On March 24, 1980 public officials who pertained to death squads assassinated the Archbishop of El Salvador, Monsignor Oscar Arnulfo Romero y Galdamez. The perpetrators of this crime have never been brought to justice and, as a result of a state-sponsored amnesty law, are exempt from punishment.

Monsignor Romero was murdered for his efforts to promote life, truth and justice for victims of human rights abuses. Monsignor Romero was specifically targeted for his actions on behalf of the poor, a sector of Salvadorean society marginalized in the political sphere. He dedicated himself to the defense of human rights in El Salvador despite the grave risks his work implied. Salvadoran citizens have recognized his sacrifice in the name of human rights, and he has come to be considered a martyr of the peace process and the struggle for justice in his country. His life is a symbol of inspiration for men and women who continue to struggle to make human rights a reality.

Tutela Legal del Arzobispado de San Salvador in cooperation with CEJIL initiated efforts to obtain justice for the extra-judicial execution of Monsignor Romero. On September 24, 1993, a petition denouncing the assassination of Monsignor Romero was presented to the Commission. During a hearing before the Commission, Monsignor Gregorio Rosa Chávez gave valuable testimony to the Commission concerning Monsignor Romero's pastoral work. On April 18, 2000, the Commission published its final report on the matter, recognizing the participation of State agents in the death squads responsible for the assassination. The report concluded, among other things, that El Salvador is responsible for the violation of the right to the life, judicial guarantees, judicial protection and the right to the truth, as protected by the American Convention. ♡



CHALLENGES FOR THE PROTECTION OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS BEFORE THE INTER-AMERICAN COMMISSION

The Inter-American System currently faces many new challenges, which require the development of innovative jurisprudence that will allow for effective and full protection of economic, social, and cultural rights throughout the region. Below are brief summaries of some relevant cases pending before the Inter-American system. These cases illustrate new developments in Inter-American jurisprudence in relation to economic, social, and cultural rights.

Right to remunerated work, freedom from slavery, physical integrity and judicial guarantees. This important case concerns a minor who was forced to work in a labor camp in Brazil. This minor and the other workers were persuaded to come to camp with promises of high wages and good work conditions. The petition presented to the Commission alleged that Brazil had failed to investigate and eliminate the practice of slave labor. The Commission issued a report in the case and is currently mediating a friendly settlement. Petitioner's conditions for friendly settlement include the following: indemnification of the victim; legislative changes specifically related to the expropriation of property in relation to forced labor; modifications to the penal code in relation to forced labor offenses; and reforms to inspection procedures of labor conditions (Case No. 11.289 José Pereira).

Right to health. The Commission petitioned El Salvador to adopt precautionary measures to protect 27 people with HIV-AIDS. The objective of the measures was to ensure that the government provided the victims with immediate medical treatment, including the medications needed to prolong their lives. The Commission granted the measures on February 29, 2000 and on March 15, 2000, El Salvador informed the Commission that the authorities were revising the clinical histories of the victims in order to determine the specific therapy and treatment that each person required. Currently, El Salvador is negotiating with foreign countries to obtain the necessary funds to provide the needed treatment. Both parties in the case continue to monitor the situation and inform the Commission about any progress

made in the settlement agreement (Precautionary measures for Odir Miranda and others).

Right to the health. On September 23, 1999, two patients with HIV-AIDS in Chile petitioned the Commission for precautionary measures in order to obtain social security insurance benefits and the guarantee of non-discriminatory medical attention. The victims requested that the treatment include specialized medications for their illnesses as well as nutritional attention, which would help strengthen their immune system and prevent the development of other diseases or infections. On September 25, 1999, the Chilean government informed the Commission of its commitment to provide the requested treatment to the two patients (Precautionary measures for two Chilean Citizens).

Right to property, life and health. The Yanomami indigenous community of Brazil, located on the boarder of Venezuela and Brazil, was victim of a massacre orchestrated by gold prospectors (garimpeiros) that had occupied their land. As a result of two confrontations between the indigenous community and the invaders, 16 indigenous people were killed. On December 10, 1999, a friendly settlement was signed in which Venezuela recognized its obligation to ensure the community's integrity, to guarantee the community's right to health, and to undertake legislative reform. As part of the settlement, Venezuela signed a bilateral agreement with Brazil in which it committed to establishing a plan to monitor and control the mining activity in the zone. The agreement is currently being implemented (Case no. 11.706 Massacre of a Yanomami indigenous community).

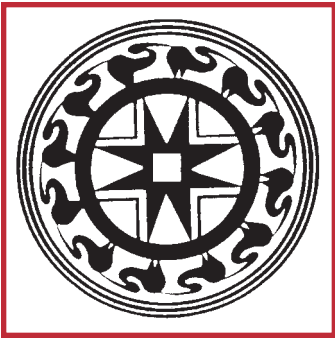
Right to education and nationality. Dilcia and Violeta were born in the Dominican Republic, and therefore according to the Dominican Constitution are Dominican citizens. However, Dominican authorities refused to register their births and recognize their Dominican citizenship because they are of Haitian descent. Violeta was expelled from school because she

did not have a birth certificate. In compliance with the precautionary measures adopted by the Commission, Dominican authorities allowed Violeta to re-enroll in school. However, the Dominican Republic has yet to recognize either child's right to nationality, thus prolonging the litigation of the case. (Case 12.189 Dilcia Yean and Violeta Bocico Cofi).

Right to culture, to subsistence and other social rights. This case involves the 35 indigenous communities in Argentina which comprise the Association of Native Communities Lhaka Honat. Argentina has violated these communities' right to physical survival (life and health), cultural integrity, and a healthy environment by threatening these communities with expulsion from their land in order to construct an international bridge and implement a plan of urbanization in the area. A proposal for a friendly settlement is currently under discussion. The main issues at stake are the recognition of the right to property and the potential environmental impact of the development project (Case 12094, Association of Native Communities Lhaka Honat). 🍀

EDITORIAL (continued from page 1)

The challenge facing non-governmental organizations, lawyers, and social movements active in the defense of human rights in the region is to document cases that will establish favorable precedents with respect to economic, social and cultural rights. In addition, the system's organs must develop reasonable, flexible, and effective mechanisms to respond to the social challenges of the new decade. The fact that the Protocol of San Salvador has entered into force will fuel progress in the achievement of these objectives. 🍀



JURISPRUDENCE OF THE INTER-AMERICAN COURT AND THE SCOPE OF ECONOMIC, SOCIAL, AND CULTURAL RIGHTS

The Court has reasoned that human rights treaties are living instruments and therefore the interpretation of these treaties should reflect existing circumstances and evolving standards. (Villagrán Morales and others Case, Judgement of November 19 1999, paragraph 193). Thus, the Inter-American System for the protection of human rights has been adapting to the various needs of the region, including the necessity to guarantee the free and full exercise of economic, social, and cultural rights. At the moment, the Court is considering the merits of several cases with important implications for these rights:

1. There is no litispendencia nor duplicity when a case appears both before the Committee on Freedom of Association and the Inter-American Court

This was the holding in the Court's November 18, 1999 decision on preliminary exceptions in the *Baena and Others* case against Panama. The Baena case is the first before the Court involving the right to work, the right to unionize, and the right of association. CEJIL worked as legal consultants with the Commission to submit a petition before the Court on January 16, 1998. Previously, the case had been presented before the Committee on Freedom of Association (CFA) of the International Labor Organization (ILO). The Court ruled that although CFA had already pronounced on the merits of the case, there did not exist litispendencia nor duplicity of the action pending before the Court because identity did not exist in the cases. In other words, the parties, the subject, and the causes of action in each litigation were different. While the defendant - the State of Panama - was the same in both procedures, the petitioners were not the same. The International Confederation of Free Union Workers had brought the case before CFA while the Panamanian Committee of Human Rights had brought the action before the Court.

In addition, the victims were different in each proceeding. In the case before CFA, petitioners referred to the victims as the majority of workers and dismissed union leaders, whereas the demand before the Court individualized the alleged victims. Moreover, petitioners presented additional facts in the case presented before the Court. The CFA proceedings exclusively considered what happened in December of 1990, while the petition before the Court included additional facts that arose after the initial December protest. With respect to the causes of action, the petition presented before the CFA was based on violations to Agreements 87 and 98 of the ILO, whereas the petition presented before the Court alleged violations of the Convention. In addition, the Court noted that the legal consequences of each process differed substantially. While the CFA only emits recommendations to the States, the Court issues judgments that are final, definitive, and require full compliance by State Parties. The Court's decision represents significant progress in the protection of workers' rights by recognizing the possibility of presenting a petition before two international forums of different characters.

2. The Court holds that it has jurisdiction to decide the first case on indigenous rights

The indigenous community Mayagna Awas Tingni lives according to their customs and under a structure of traditional leadership. This community abides by an ancestral system of land ownership in which ownership is based on the socio-political organization of the community. In violation of the community's principles regarding land ownership, Nicaragua granted authorization for the exploitation of their land without obtaining consent.

The original petition before the Commission was submitted by the Center of Legal Resources for the Indigenous Towns, a legal office based in Montana, U.S.A.. The Asociación de Síndicos Indígenas de la Costa

Caribe Nicaragüense subsequently joined the litigation as co-petitioners. The Commission argued before the Court that Nicaragua had violated the community's right to property in granting the authorization without demarcating the communal land, without taking effective measures to guarantee the indigenous community's property rights to the land, and without obtaining permission for the development of the land. In its judgement of February 1, 2000, the Court's rejected Nicaragua's arguments regarding preliminary exceptions, and in a November 2000 hearing heard arguments on the merits of the case. The Commission hopes that the Court eventual decision will recognize and guarantee the indigenous community's rights to their ancestral lands.

3. A state's violation of the rights of street children makes children victims of dual violations

In its judgement of November 19, 1999 on the merits of the *Villagrán Morales and Others* case against Guatemala (in which CEJIL and Casa Alianza acted as legal consultants), the Court established that Guatemala had failed to protect at-risk children thus making them the victims of dual violations. The Court held that States which do not prevent children from living in poverty, thus depriving them of the minimum conditions necessary for a dignified life and hindering the full and harmonious development of their personality. Furthermore, the Court recognized that the state has the duty to encourage and foster the right of every child to develop a life plan, and recognized that the realization of a child's potential does not only benefit the child but also the society to which he/she belongs. Secondly, the Court held that States which fail to protect at-risk children also violate children's physical, mental, and moral integrity in addition to their right to life.



CEJIL CELEBRATES SIX YEARS OF ACTIVITIES IN SAN JOSE, COSTA RICA.

In August, 2000, the regional office of CEJIL/MESOAMÉRICA celebrated its six-year anniversary in San Jose, Costa Rica. The office was established in San José in order to be in close proximity to the Inter-American Court of Human Rights and to carry out regional projects throughout Central America and Mexico.

This office has presented more than 60 cases before the Commission, dealing with a variety of human rights violations including massacres, disappearance and executions of minors, the rights of indigenous peoples and women, freedom of expression, and labor rights, among others.

In workshops and seminars conducted throughout the region, CEJIL/MESOAMERICA has also provided training to local partners on the standards and procedures of the Inter-American System of Human Rights. A number of interns from prestigious universities contributed to the office's work and in the process gained valuable experience in litigation before the system. ♡



The art work that accompanies the gazette is the work of Antonio Grass, a Colombian artist dedicated to the investigation and recuperation of diverse manifestations of pre-Columbian art.

SPECIAL THANKS TO THE FRIENDS OF CEJIL

CEJIL was created by a group of regional non-governmental organizations that sought to increase the impact of their domestic human rights litigation through the support of an office dedicated to the use of the Inter-American system. During the last few years, CEJIL has litigated in the entire Continent in close collaboration with more than 140 local organizations. When CEJIL first began its work in the early 90's, the Commission had issued few decisions in individual cases and very few cases had been sent at the Court. Similarly, few NGOs actively litigated in the system. After ten years work, we are proud to have assisted many organizations in their efforts before the system. We have also collaborated with experts in the field of human rights to maximize the impact of advocacy work. Similarly, CEJIL has worked with a number of regional organizations, developing workshops and undertaking lobbying efforts in order to strengthen the Inter-American system. CEJIL extends its sincere thanks to both old and new friends for their solidarity and teamwork which has translated into progress in the field of human rights in the region. ♡

REGIONAL PROGRAMS

CEJIL

Viviana Krsticevic, Executive Director
1630 Connecticut Ave, NW
Suite 555
Washington, DC 20009, EEUA
Tel: 202-319-3000
Fax: 202-319-3019
cejil@igc.apc.org

CEJIL/MESOAMERICA

Carmen Herrera, Director
Del Spoon de los Yoses, 125 Sur
Edificio Blanco de dos pisos, piso 2
Los Yoses, San Pedro, San José, Costa Rica
Tel: 506-280-7608 / 7473
Fax: 506-280-5280
cejilmes@sol.racsa.co.cr

CEJIL/BRASIL

Liliana Tojo, Director
Avenida Marechal Camara, 350, sala 707
Rio de Janeiro, Centro RJ
CEP 20020-080 Brasil
Tel/Fax: 55-21-533-1660
cejilbrasil@ax.apc.org

CEJIL/SUR

Argentina:
Julieta Rossi, Representative
c/o Rodríguez Pena, 286, 1 piso
Buenos Aires, Argentina
Tel: 541-14-371-9968 / 371-3790
Fax: 541-14- 375-2075
abogados@cels.org.ar

CEJIL/Paraguay

Raquel Talavera, Representative
Brunno Guggirari 893 c/ Av. Fernando de la Mora
Asunción, Paraguay
Tel/Fax: 595-21-556-799
cejil@highway.com.py

CEJIL/Chile

Francisco Cox, Representative
c/o Universidad Diego Portales, Facultad de Derecho
Avenida República, 105 Santiago, Chile
Tel: 562-676-2609
Fax: 562-676-2602
francisco.cox@udp.cl



NEW FEATURES OF THE INTER-AMERICAN SYSTEM: THE PARTICIPATION OF NGOs IN THE GENERAL ASSEMBLY OF THE ORGANIZATION OF AMERICAN STATES (OAS)

During the last four years, a group of local, regional, and international NGOs have begun utilizing this regional political forum to promote a human rights agenda by forming a lobbying coalition. This initiative reflects the NGO community's experience in organizing similar coalitions around other international events of the United Nations, such as, the 1993 Conference of Human Rights in Vienna and the 1995 Beijing Women's Conference in China.

The growing interest of civil society organizations to influence decisions made by the General Assembly is particularly significant given that in the past these organizations were marginalized from participating in inter-government bodies. In fact, one of the most important accomplishments of this collective effort was the Permanent Council's approval of the "Directives for the Participation of the Organizations of the Civil Society in the Activities of the OAS" in December 1999. This document grants official status to those organizations registered in the OAS, and allows them to participate in all the meetings of the political organs of the OAS, to distribute documents by the official route, to make presentations with the authorization from the relevant committees, and to testify in working groups and groups of experts, (see www.oea.org).

The General Assembly of Windsor

Several non-governmental organizations attended the annual General Assembly meeting of the O.A.S., which took place in Windsor, Canada, from June 4 - 6 of 2000. Of these organizations, at least fifteen continuously and actively participated in the NGO coalition, which for approximately four years has been lobbying, before the Assembly, subjects relative to human rights. This coalition was composed of important regional and international NGOs, including the Colombian Commission of Jurists, Human Rights Watch, the Mexican Network of Civil Organizations of Human Rights "Todos los Derechos para Todos" (trans. "All of the Rights for All), a network of more than 50 Mexican NGOs, the

International Center for Human Rights and Democratic Development (ICHRDD), Amnesty International, the International Commission of Jurists, the Lawyers for Committee Human Rights, the National Coordinator of Human Rights of Peru, (a network of more than 50 Peruvian NGOs), and CEJIL.

With the backing of more than 300 regional human rights organizations, this coalition presented the General Assembly with a statement that dealt with common lobbying subjects. In addition to other issues, the statement focused on the following pressing concerns: the Peruvian elections; the strengthening of the Inter-American system, (including the obligatory nature of the execution of the Inter-American Court sentences); the protection of human rights defenders; and initiatives on structural reforms of the Inter-American System.

The Assembly considered the Peruvian elections a high-priority. The Inter-American Commission's report on its 1998 in loco visit to Peru and updated information about country conditions made a profound impact on the participants. The Commission's report described Fujimori's re-election as a threat to the Peruvian democratic process and illustrated Peru's lack of independence of Peruvian judiciary by pointing out that 80% of the judges are not permanent and thus vulnerable to aggressive campaign of harassment and persecution.

With respect to the obligatory nature of the Court's sentences, the Commission's report referenced Peru's refusal to implement the Court's decisions. As result of this stinging report and the lobbying efforts of the NGO coalition, the States present at the Assembly made an unanimous statement regarding the need to protect the Inter-American system and also recognize the importance of full compliance with the sentences issued by the Inter-American Court.

In relation to the work of human rights defenders in the region, the States agreed with the concern presented by the NGO coalition and encouraged the Commission to continue paying close attention to the work of human rights defenders in the Americas (Resolution

1711 of June 5, 2000).

The Assembly approved Resolution 1701 of June 5, 2000 on the general reform initiatives of the Inter-American System. This Resolution encourages States members of the OAS to continue with their efforts to improve and strengthen the system's procedure, specifically urging that governments comply with the decisions emitted by the Court and the recommendations of the Commission.

It is important to note that during this session of the General Assembly, through the support of the Government of Canada and specifically that of its Chancellor Lloyd Axworthy, NGOs attended a meeting with the directors of O.A.S. political organs. The coalition used this meeting to present observations, concerns, and suggestions regarding the system that were later forwarded to the General Assembly in writing and signed by the NGOs participating in the coalition. During the meeting, the coalition emphasized the importance of establishing a coordination mechanism which would ensure a space for NGO involvement in the forthcoming session of the General Assembly. The coalition's comments were specifically addressed to the Chancellor of Costa Rica, for the next session will be held in Costa Rica in June of 2001. CEJIL is committed to coordinating the preparation through the Costa Rican Chancellery and will maintain the other organizations informed about relevant developments.

During the same session, the NGO community was also active in organizing several separate events open to the Canadian public. The International Center for Human Rights and Democratic Development (ICHRDD) organized a three-day symposium on Hemispheric Integration and Democracy in the Americas. The subjects addressed included: Towards a Democratic Hemisphere; Hemispherical Perspectives; the Summit of the Americas; and the Priorities of the Civil Society. CEJIL participated in the Priorities of Civil Society panel, addressing the Plan of Action being undertaken by the NGO community with respect to the protection of human rights within the Inter-American System for the 2001 Summit of Québec.