© 2021 by The American Society of International Law
DOI:10.1017/ilm.2021.3

BRIEFLY NOTED

(Not reproduced in *International Legal Materials*)

Judicial and Similar Proceedings

1. Guzmán Albarracín et al v. Ecuador (Inter-American Court of Human Rights – June 24, 2020)

<https://corteidh.or.cr/docs/casos/articulos/seriec_405_esp.pdf> [in Spanish only]

Issued on June 24, 2020, this is the first judgment of the Court on sexual violence in schools. The case involved the death of a student in a public high school in Ecuador, who was the victim of sexual violence nearly twenty years ago. Following the coerced termination of a pregnancy, the student committed suicide. Following her death, her family filed several complaints against the school and its vice principal, but a proper investigation was never undertaken, nor have any Ecuadorian courts ruled on the matter. Therefore, the victim's mother filed a petition at the Inter-American Commission, arguing that Ecuador was responsible for her daughter's death. The Commission agreed, finding that Ecuador was responsible for violating the deceased's rights to life; physical, mental, and moral integrity; privacy; special protection as a child; equal protection; progressive development; and education. Moreover, the Commission found that the family's rights to humane treatment, fair trial, and judicial protection were violated. Finally, it held that Ecuador failed to respect the obligation in Article 7 of the Convention on the Prevention, Punishment and Eradication of Violence Against Women to prevent, punish and eradicate violence against women. The Commission made several recommendations to Ecuador as a result, but Ecuador failed to comply with its recommendations. Therefore, the Commission took the case to the Court for an official declaration of Ecuador's responsibility.

The Court concluded that Ecuador: (1) violated the deceased's rights to life, integrity, dignity, and education; (2) failed to prevent acts of violence against adolescent women, nor did it implement policies to do so; (3) infringed rights to judicial protection, and equality before the law; and (4) Violated the right to psychological and social integrity of the deceased's mother and sister, who suffered trauma and social stigma surrounding news media coverage of her suicide and sex scandal, and spent years seeking justice. The Court then made a number of recommendations to Ecuador in addition to those made by the Commission.

2. Prosecutor v. Augustine Gbao (Decision of the President on Application for Conditional Early Release) (Special Court for Sierra Leone – September 8, 2020)

<http://rscsl.org/Documents/Decisions/RUF/1346/RSCSL-04-15-ES-1346.pdf>

On September 8, 2020, the President of the Residual Special Court for Sierra Leone granted Augustine Gbao early release, with a three-month delay. Gbao was convicted on fourteen counts of crimes against humanity by the Court on March 2, 2009 and sentenced to twenty-five years of imprisonment on April 8, 2009. The Court's Practice Direction on Conditional Early Release permits consideration for early release if certain conditions are fulfilled. According to a press release from the Court, in this case, the Court ordered Gbao to "undergo specific training geared to his understanding of and acceptance of responsibility for the harm he inflicted by his crimes" during the three-month delay. Once it is confirmed that his training is complete, he will be allowed to serve the remainder of his sentence in his community, under strict monitoring. He has just under seven years remaining in his sentence. The Court imposed additional conditions on his release, including that Gbao give a radio and television apology to the victims of his crimes, and to Sierra Leone generally, in which he must accept responsibility for his actions, express remorse, commit to the reparations and peace process in Sierra Leone, and not associate with former combatants or people convicted by the Special Court.

3. Zakharov and Varzhabetyan v. Russia (European Court of Human Rights – October 13, 2020)

<http://hudoc.echr.coe.int/eng?i=001-205060>

On October 13, 2020, the Third Section of the European Court of Human Rights (ECtHR) issued its judgment in *Zakharov and Varzhabetyan v. Russia*, a case implicating Articles 3 (degrading treatment and effective investigation) and 11 (freedom of peaceful assembly). The applicants in the case were part of a political

https://doi.org/10.1017/ilm.2021.3 Published online by Cambridge University Press

rally at Bolotnaya Square in Russia on May 6, 2012, which led to a skirmish between the police and the protestors, which eventually was dispersed by the police. According to a Case Information Note from the Court, the applicants had alleged that they were hit on the head by the police during the dispersal of the rally and were unable to persuade the local authorities to launch a criminal investigation into the alleged treatment. The ECtHR held unanimously that there was a violation of Article 3 because of the national authorities' failure to initiate an investigation into the matter. The Court went on to address the applicants' complaints relating to their treatment by the police and found that the "use of force against [the applicants] had . . . not been strictly necessary . . . and thus had diminished [the applicants'] dignity" in violation of Article 3's prohibition on inhumane and degrading treatment. Finally, the Court held that the state failed to justify the police's use of force against the applicants and that therefore Article 11 had been violated. The Court noted that not only was the use of force unnecessary, but that "it could have had a chilling effect and discouraged the applicants and others from taking part in similar public gatherings." It is unclear whether the parties will seek a referral of this case to the Grand Chamber.

4. Guyana v. Venezuela (Judgment on Jurisdiction) (International Court of Justice – December 18, 2020)

<https://www.icj-cij.org/public/files/case-related/171/171-20201218-JUD-01-00-EN.pdf>

On Friday, December 18, 2020, the International Court of Justice issued its decision in *Guyana v. Venezuela,* on the question of its jurisdiction in the case. Guyana asked the Court "to confirm the legal validity and binding effect of the Award regarding the Boundary between the Colony of British Guiana and the United States of Venezuela, of 3 October 1899)." According to a press release from the Court, Guyana argued that the 1899 award was the final settlement on all questions relating to the boundary line between British Guyana and Venezuela. According to Guyana, the Court's jurisdiction was based on the 1966 Agreement to Resolve the Controversy between Venezuela and the UK over the Frontier between Venezuela and British Guiana (the Geneva agreement), as well as the UN Secretary General's decision in 2018 to choose the ICJ as the means to settle the dispute between the two parties. Venezuela opposed the Court's jurisdiction and so the Court separated the question of jurisdiction from the merits of the case. By a judgment of twelve votes to four, the Court found that it has jurisdiction to hear the aspects of the application filed by Guyana that related to the validity of the 1899 award and the question of the definitive nature of the settlement of the land boundary dispute. It ruled that, pursuant to Article IV, paragraph 2, of the Geneva Agreement, the "'controversy' that the parties agreed to settle through the mechanism established under the Geneva Agreement concerns the question of the validity of the 1899 Award, as well as its legal implications for the boundary line between Guyana and Venezuela." Moreover, the Court found that the parties agreed to give the UN Secretary General the authority to choose, by a binding legal decision, the means to settle their dispute and that the parties consented to the Secretary General's choice of judicial settlement. This means, ultimately, that the parties consented to the jurisdiction of the ICJ.

Judge Abraham dissented on the point of consent, arguing that the parties did not give their consent in advance to judicial settlement. Judge Bennouna also dissented on that point, arguing against the conclusion by the majority that the Secretary General could consent to the jurisdiction of the Court in lieu of the parties.

RESOLUTIONS, DECLARATIONS, AND OTHER DOCUMENTS

1. Impact of the coronavirus disease pandemic on contemporary forms of slavery and slavery-like practices (United Nations Human Rights Council – Report of the Special Rapporteur on contemporary forms of slavery, including its causes and consequences – August 4, 2020)

<https://undocs.org/A/HRC/45/8>

Published on August 4, 2020, this report was adopted at the forty-fifth session of the UN Human Rights Council from September 14 to October 2, 2020. The report outlines a number of social and economic impacts of the pandemic, especially on the labor market, noting that "The massive losses of employment and income due to the crisis will exacerbate global poverty and inequality, disproportionally hurting those with no adequate social protection coverage, especially in the poorest countries and in the poorest

https://doi.org/10.1017/ilm.2021.3 Published online by Cambridge University Press

neighbourhoods." The report then discusses how the risk of slavery has been exacerbated by the pandemic, especially among the 2 billion people in the "informal economy" who have "suffered massive damage to their capacity to earn a living due to lockdown measures and/or because they work in the hardest-hit sectors." It notes in particular the fact that women typically experience the effects of pandemics more negatively than men because they "are more often exposed to vulnerable categories of work, such as domestic work, where they face low wages, excessively long hours, risk of physical, mental and sexual abuse or restrictions on freedom of movement and other exploitation." The report suggests that children and those aged 15-24 will suffer the most long-term effects of the recession and unemployment and emphasizes the impact of the pandemic on their education and training. The report raises similar concerns about minority groups, migrants, refugees, asylum-seekers, and internally displaced persons, who are disproportionately impacted because of their innate status as vulnerable persons, and it discusses the resultant increased susceptibility to criminal organizations due to the economic and social impacts of the pandemic. In addition, the report highlights that the pandemic "has exposed pre-existing systemic gaps in social protection and justice systems, including with regard to identification and prosecution of contemporary forms of slavery, despite commitments made by States to meet target 8.7 of the Sustainable Development Goals." It then goes on to outline a number of international standards and emerging good practices regarding access to justice and remedies, measures to mitigate the impact of COVID-19, and international cooperation. Finally, it makes a number of conclusions concerning the failure of states to fulfil their anti-slavery obligations and commitments, and several recommendations regarding access to justice, support for civil society and government service providers, measures to mitigate the impact of COVID-19, upholding and enforcing national labor laws, and international cooperation.

2. Restoring Democratic Institutions and Respect for Human Rights in Nicaragua through Free and Fair Elections (Organization of American States – October 22, 2020)

<http://scm.oas.org/doc_public/english/hist_20/AG08237E03.docx>

On October 21, 2020, the Organization of American States (OAS) General Assembly adopted two resolutions on the right to free and fair elections. The first, aimed at Nicaragua, specifically focuses on "restoring democratic institutions and respect for human rights . . . through free and fair elections." The OAS General Assembly expresses concern that Nicaragua has not implemented a number of measures previously agreed upon, such as the release of all political prisoners, and it "not[ed] with alarm" the use of legislation to intimidate political opponents, in particular, pro-democracy groups and independent media. The resolution concludes by urging Nicaragua to accept independent electoral observation missions and to take a number of measures to ensure that the elections process respects human rights and is free and fair.

3. The Lack of Minimum Democratic Conditions to Guarantee Free, Fair, and Transparent Elections in the Bolivarian Republic of Venezuela (Organization of American States – October 22, 2020)

<https://www.oas.org/en/media_center/press_release.asp?sCodigo=S-018/20>

The second OAS resolution is targeted at Venezuela and focuses on the "lack of minimum democratic conditions to guarantee free, fair, and transparent elections." It expresses "profound concern at and rejection of the maneuvers to secure control by the illegitimate regime of Nicolás Maduro" and the actions carried out by his regime that have undermined the electoral process. The OAS resolves to undertake a number of actions, including condemning the actions of the Maduro regime and declaring that it will not recognize the National Assembly election process until conditions are fulfilled that are necessary to ensure that the elections are free, just, impartial, and transparent.

https://doi.org/10.1017/ilm.2021.3 Published online by Cambridge University Press