

FIRST FREEDOM OF INFORMATION CASE REACHES AMERICAS' COURT

Inter-American Commission Finds Chile in Violation of Human Rights Charter

New York, July 14, 2005— The Inter-American Court is to consider the first case involving the right to access public information in its 26-year history. The case was referred this month to the Court by the Inter-American Commission on Human Rights, an auxiliary body of the Court, following the Commission's April 2004 finding that Chile had violated the American Convention on Human Rights.

The case originated in a May 1998 request by the Terram Foundation, a Chilean environmental NGO, for information about a major logging undertaking known as the Condor River project. The requestors asked the Chilean Foreign Investment Committee – a government body mandated to assess foreign investment proposals in Chile – to provide information on the environmental and general track record of Trillium Ltd, the company managing the Condor River project.

Terram's request was ignored by the Committee and subsequent appeals were summarily dismissed in Chile's courts. In December 1998, a number of South American rights groups filed a petition with the Inter-American Commission on behalf of Terram.

In April 2004, the Inter-American Commission issued a preliminary report on the case concluding that Chile had violated the applicants' rights under Article 13 of the American Convention, guaranteeing the right to access public information. The Commission urged Chile to remedy the situation within 60 days. Following Chile's failure to comply within that period, the Commission referred the case to the Court for adjudication.

In its April preliminary report, the Commission affirmed a number of general principles regarding freedom of information:

- ☐ The free expression rights guaranteed by Article 13 of the American Convention include a general right to access state-held information and a corresponding obligation for states to ensure information availability. This right is subject to limited exceptions, which must be consistent with the principle of the "presumption of openness."
- ☐ Article 13 requires that states define expressly in national law both the presumption of openness and the limited grounds for denying access to official information.

With respect to the facts of the case, the Commission found that:

- ☐ At the relevant time, Chilean law did not define restrictions on the right of access to information, giving government officials unlimited discretion to grant or deny requests for information.
- ☐ Chile failed to show that it was "necessary" to withhold the requested information in order to protect any of the legitimate interests provided for in Article 13. In

particular, the Commission dismissed the state's claim that the information at issue was protected by commercial confidentiality, finding that the state had not demonstrated any substantial harms in that respect greater than the public interest in disclosure.

- Chile did not grant the applicants an effective remedy for the violation of their right to access information.
- Due to its failure to “adapt its internal legislation in a manner that guarantees” the right of access to information, Chile violated its obligations under Articles 1 and 2 of the Charter to “give effect” to the right.

The Commission asked Chile to bring its domestic legal order in conformity with its Article 13 obligations regarding access to information, and to adopt the measures necessary to guarantee effective access to official information for its citizens. The state was also asked to “publicly divulge” the information requested by the petitioners, and to grant them adequate reparation.

On February 23, 2005, the Justice Initiative and three other groups – ARTICLE 19, Libertad de Información México (LIMAC), and the Lima-based Press and Society Institute (IPYS) – filed jointly a “friend of the court” brief with the Inter-American Commission in support of the applicants’ case. The brief is available at: www.justiceinitiative.org/db/resource2/fs/?file_id=15384