

PANAMA

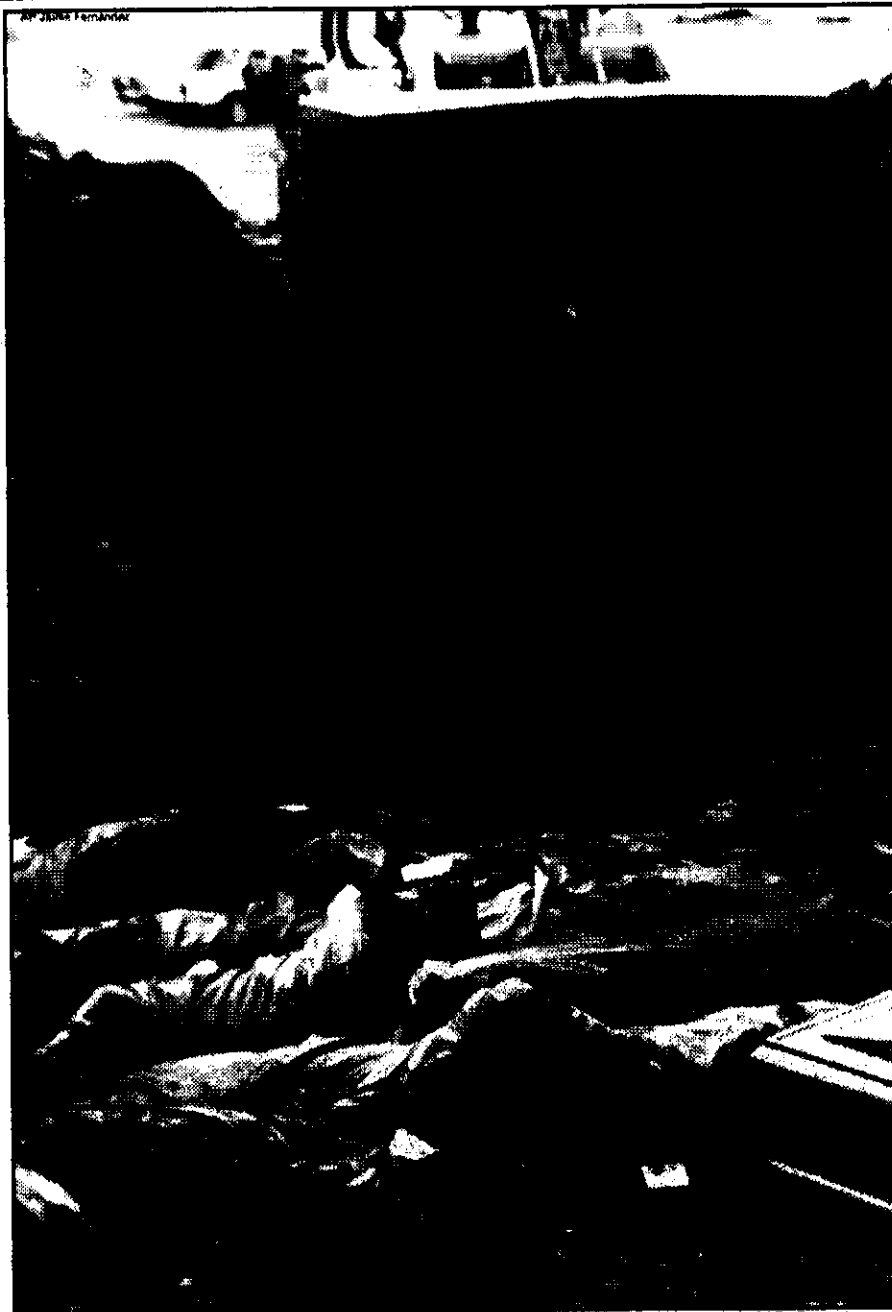
The Center for Constitutional Rights (CCR)—an American non-governmental organization—requested EAAF's assistance in the investigation of the fate of Panamanian victims who died during the 1989 American invasion of Panama. In 1990, CCR filed a complaint on behalf of 285 Panamanians before the Inter-American Commission on Human Rights from the American Organization of States (ICHR-OAS). To further investigate the issue, a CCR representative and three EAAF members went to Panama for three weeks during July 1995. The mission was sponsored by CCR and EAAF.

Background

On December 19, 1989 the United States invaded Panama and ousted General Manuel Noriega in a military operation called "Just Cause." U.S. military officials heralded the invasion as a "surgical strike." The public, however, had little access to reliable information about civilian casualties.¹ Most of the press was denied access to combat zones during the period of heaviest fighting the first days of the operation.

Panamanian and American non-governmental organizations and the US government have been involved in heated controversy over the number of Panamanian civilian and military casualties, the whereabouts of their remains, and the damage to property caused by the invasion, as well as the economic compensation that the victims and relatives of the victims are claiming as a result of the invasion. Much of the debate has centered on the num-

ber of victims killed during the invasion. Even today, neither the Panamanian nor the US governments has presented a complete list of the Panamanian civilians and combatants who died during the invasion. Different Panamanian and American organizations have provided figures ranging from 1,000 to 4,000 Panamanians killed—(The Report of the Independent



Panamanian casualties of the US invasion, at El Corozal cemetery in the US Canal zone.

A.P. Jaime Fernandez

1. Operation 'Just Cause': A case study in estimation of casualties after war," P.Wise, N. Amison, G. Bloche, J. Schaller, The PHR Quarterly, September 1991, vol. 1, No. 3, p. 138.

Commission of Inquiry (USA); Comision Nacional por los Derechos Humanos de Panama, (CONADEHUPA)²; Isabel Corro, former president of Asociacion Caidos del 20 de Diciembre de 1989, among others—to figures between 300 and 400 Panamanians killed (several governmental and nongovernmental organizations such as the Panamanian Medical Legal Institute (COPODEHUPA), Panama; Physicians for Human Rights (Boston)³; Human Rights Watch/America (New York)⁴; etc. This issue of the number of casualties was also investigated by the Subcommittee of the US Congress Committee on Armed Services, House of Representatives.⁵

As was pointed out by such organizations as America's Watch, though the question of the number of civilians killed is extremely important, this controversy overshadows another

equally important issue: under what circumstances Panamanian civilians and military personnel died.

The US Invasion of Panama and the Inter-American Commission for Human Rights

On May 10, 1990 the Center for Constitutional Rights (CCR) filed a complaint on behalf of 285 Panamanian civilians who suffered in different ways from the 1989 U.S. invasion with the Inter-American Human Rights Commission from the Organization of American States.

The Inter-American system rests on a dual legal basis: the American Convention on Human Rights, which was adopted in 1969⁶ and entered into force in 1978, and the Charter of the OAS⁷, adopted in 1949 and effective since 1951:



Photo courtesy of Gilles Peres

Mass grave of Panamanian casualties

"The legal nature of these instruments derived from their status as treaties to whose contents and obligations states gave their consent through the process of ratification...A subsidiary element in the system's legal basis is the American Declaration of the Rights and Duties of Man. While this has been adopted as a non-binding instrument, it has acquired some legal status as the definition of the human rights to which the OAS Charter referred and, through general acceptance, as part of customary international law..."⁸"The Convention filled the need for a definition of human rights cast in a legally binding form and for implementary mechanism that would be more effective than those previously serving the region."⁸

2. Report of the Independent Commission of Inquiry, p. 34; CONADEHUPA, Olga Mejia, "A Crime Against Humanity," p. 67, in Report of the Independent Commission.
3. "Operation 'Just Cause': the Human Cost of Military Action in Panama," PHR, October 1991.
4. "The Laws of War and the conduct of the Panama invasion," Americas Watch, May 1990, p. 12. Also "Panama: Human Rights in Post-invasion Panama: Justice delayed is justice denied," Newsletter Americas Watch, April 7, 1991.
5. "The invasion of Panama: how many innocent bystanders perished?" Report of the Investigations Subcommittee of the Committee on Armed Services, House of Representatives, July 7, 1992.
6. The Convention was adopted by the InterAmerican Conference on the Protection of Human Rights, San Jose, Costa Rica, November 1969.
7. The OAS Charter was adopted at the Ninth International Conference of American States, held in Bogota, Colombia in 1948.
8. "The Legal Basis for the Inter-American Human Rights System," at Transitional Judicial Review under the Inter-American System for the Protection of Human Rights, L6265X, Professor Alejandro Garro, Columbia University, Fall 1994, p. 320

By 1989, 31 Latin American countries had ratified the Charter and 21 of these states had also adhered to the Convention.

The OAS Charter, a non-binding instrument, enforces the human rights provisions it has adopted through the Inter-American Human Rights Commission, which in 1967 became a statutory organ "whose principal function shall be to promote the observance and protection of human rights and to serve as a consultative organ of the Organization in these matters."



Fabio Martinez, a plaintiff in *Valas vs. U.S.*, outside OAS offices

The structure, competence and procedures of the Commission were to be determined by the Commission's Statute and Regulations and by an Inter-American Convention on Human Rights which, as stated before, entered into effect in 1978.

The Commission can present cases before the Inter-American Court, "an autonomous judicial institution whose purpose is the interpretation and application of the American Convention on Human Rights," as it states in Article I.

The United States signed the Convention and President Carter transmitted it to the Senate for its advice and consent to ratification, but the Senate failed to act on his request.⁹

The case of the US invasion of Panama—*Salas v. U.S.*—includes relatives of people

killed, and others who were injured or whose properties were destroyed or damaged as a consequence of the military invasion. After three years of discussion, on October 14, 1993 the OAS Commission accepted the petition presented by CCR.

The US government did not accept this decision, arguing among other things that the Commission had no jurisdiction over the U.S.'s actions, since the U.S. has not ratified the Convention and is therefore not bound by it.

On February 1995, CCR attorneys and their witnesses outlined before the Commission arguments concerning the illegality of the invasion, the disproportionate use of force by the U.S., and the devastation caused to the civilian population. Different types of testimonies were heard on this occasion from witnesses such as Richard Falk, a leading expert on international law and human rights, to Fabio Martinez, a Panamanian whose son and nephew were killed during the invasion. The Commission welcomed additional evidence of damage and showed interest in creating a compensation commission to address the claims of large numbers of Panamanians against the U.S.¹⁰

The role of EAAF

Three EAAF members, Alejandro Inchaurregui, Anahi Ginarte and Mercedes Doretti traveled to Panama together with Gilda Camargo, a CCR lawyer who represents the Panamanians plaintiffs at the OAS Inter-American Human Rights Commission.

The objective of the mission was to provide CCR and local Panamanian organizations with technical support in the investigation of the consequences of the US invasion.

The work had two principal aspects:

1. To examine a number of nonregistered grave sites believed to contain the remains of Panamanians who died during the US invasion.
2. To review and update the different lists and new sources of information concerning the

9. The Inter-American System for the Protection of Human Rights, by Thomas Burgenthal, 1981 *Anuario Juridico Interamericano*.
10. CCR News, Spring 1995, Number 6, p. 9.

Panamanians killed during the invasion.

EAAF presented a report to the OAS Inter-American Commission on Human Rights on its findings. However, we cannot provide details of these findings, since the case is still before the Commission, and CCR has requested that EAAF not publicize the results of its investigation.



Alejandro Inchaurregui, EAAF, and Gilma Camargo, lawyer from CCR in charge of the petition at the OEA- Inter-American Human Rights Commission, and Yolanda Barcacie, a leader of the Panamanian plaintiffs.