

# THE EXPERIENCE OF THE INTER-AMERICAN HUMAN RIGHTS SYSTEM

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*This article is one of four which provide a useful comparative paradigm to any discussion of a Pacific human rights charter or regional mechanism. The article describes the Inter-American system of human rights protection, which stretches across the Americas. After an historical introduction, the article analyses the advances that took place after 1990. The discussion focuses mainly on the roles of the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights. The article concludes that the system is able to influence state behaviour and has made significant contributions to the protection of human rights in the region.*

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## **I INTRODUCTION**

This article reviews the main features of the evolution of the Inter-American System of Human Rights ("the System"), which belongs to the Organization of American States (OAS). All independent countries of the Americas are members of the OAS, although Cuba has been suspended from it since 1962.

The article begins by presenting the main aspects of the evolution of the Inter-American System of Human Rights until 1990, as a means to have some basis for a comparison with later developments. This is followed by an analysis of the advances that took place after 1990, and of the obstacles that have prevented further changes. For these purposes, the article focuses primarily on the role of the two human rights bodies of the System, namely the Inter-American Commission on Human Rights ("the Commission" or IACHR) and the Inter-American Court of Human Rights ("the Court"), but it also makes references to some initiatives of the political organs of the OAS and the non-governmental organisations (NGOs). The study does not include a comprehensive analysis of the jurisprudence of the System, focusing instead on some landmark cases that have produced an impact on the OAS policies or on the institutional development of OAS organs. Through these

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means, I will discuss whether significant transformations have taken place at the OAS regarding human rights since civilian government became the rule at this organisation.

## ***II THE EVOLUTION OF THE INTER-AMERICAN HUMAN RIGHTS SYSTEM UNTIL THE ARRIVAL OF CIVILIAN GOVERNMENTS***

Along with the creation of the OAS, the state parties to this organisation adopted in October 1948 a human rights instrument: the American Declaration of the Rights and Duties of Man ("the American Declaration").<sup>1</sup> This was almost simultaneous with the adoption of the Universal Declaration of Human Rights<sup>2</sup> by the United Nations.

From then on, however, the UN and the OAS followed different routes in the human rights field. While the UN, albeit slowly, started to establish organs and mechanisms to protect these rights, the OAS took no further action in this respect for more than a decade. At the moment of the adoption of the American Declaration, the states party to the OAS ("the states") had also approved a resolution recognising the need for a judicial organ in charge of the protection of human rights in the Americas, and requested the Inter-American Juridical Committee to prepare a draft statute for an Inter-American Court.

This Committee, nevertheless, considered it premature to work on such a statute, pointing out that this should be preceded by the adoption by the OAS of a general human rights treaty. This would only be achieved in the late 1960s. While it is true that during the 1950s two treaties concerning the political rights of women were subscribed to, the absence of organs and mechanisms of protection made it, strictly speaking, inappropriate to refer to an "Inter-American Human Rights System" at that stage.

In addition, during these first years, the Inter-American Commission of Women became an OAS body. It was not, however, an organ specifically conceived for rights protection, but rather for the study and preparation of international instruments, such as those referred to above as well as for some promotional initiatives.<sup>3</sup>

It was only in 1959, primarily as a reaction to the Cuban Revolution and to the dictatorship of Rafael Trujillo in the Dominican Republic, that the OAS created the Inter-American Commission on Human Rights. The Commission started work in 1960. According to the Statute of the Commission ("the Statute"), which was approved by the OAS, this human rights body obtained a mandate to protect and promote human rights in the states, through the preparation of studies and reports that it

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1 American Declaration of the Rights and Duties of Man (2 May 1948) OAS Res XXX OAS Doc. OEA/Ser. L/V/I. 4 Rev.XX.

2 Universal Declaration on Human Rights (10 December 1948) UN Doc GA/Res/217A (III).

3 The Inter-American Commission of Women continues to date to be an OAS organ. It was originally established in 1928 by the Sixth American International Conference.

may deem necessary, recommendations to the states on this matter, human rights education, and other means. According to the Statute, the American Declaration would serve as the parameter to evaluate the behaviour of the states. Additionally, the Statute authorised the Commission to make *in loco* visits (that is, visits in terrain) to the countries of the Americas, provided that the state concerned gave its permission for this purpose. Over the years, this power would become crucial for the visibility of the Commission throughout the American continent, as the population of the countries most affected by grave violations would become aware of the Commission's existence and roles, enhancing, in the end, the impact of the work being done by this body.

From the very beginning, a key element for the development of the Commission was the fact that its members were elected in their individual capacities, and not as state representatives. This characteristic has proved to be a significant factor for the work of the Commission, especially considering the adverse political environment in the Americas that existed for a long time.

For almost 20 years, the IACHR was the sole body in charge of the protection of human rights within the OAS. During that period, it had to confront many dictatorships in the Americas. Under these circumstances, and considering the fact that these regimes committed massive, systematic violations of rights, the Commission used as its principal tool the preparation and publication of country reports. These reports provided a whole description of the human rights conditions in a specific country, with a special focus on attacks on the right to life, the extended practice of torture, and arbitrary detention and imprisonment. During its first years of work, the Commission issued reports on Cuba, the Dominican Republic, Guatemala and Haiti.

In the mid-1960s, the Commission started to open and decide specific cases of human rights abuses. Initially, the IACHR did not have an explicit mandate for this purpose, and when it received complaints it usually integrated the information gathered into a country report (provided that a report on the country denounced was in preparation, which was not always the case). Then, the Commission obtained the power to open cases through a reform of its Statute.

Nevertheless, during the years between 1960 and 1990, the publication of country reports remained the main mechanism used by the Inter-American Commission. This happened for two basic reasons. First, many of the states against which specific cases were opened did not participate at all in the litigation; they did not respond to the complaint, nor did they present any sort of evidence to deny the charges. Many of the states at most would respond in a merely ritual, formalistic manner. Given this context, the Commission adopted a provision in its Rules of Procedure, according to which the allegations presented by the complainants would be considered to reflect reality so long as they had not

been disputed by the state or rebutted by other sources. During the period in analysis, the IACHR decided a high percentage of the cases based on this assumption of responsibility.<sup>4</sup>

A second reason for the Commission to keep the publication of country reports as its main focus was the fact that in many states the violations committed were of a systematic nature and practised on a massive scale. When hundreds and even thousands of violations had to be confronted by the Commission within a short period of time, the decision of individual cases would barely address the situation in an effective way. A decision on a few paradigmatic cases may have been important, but most of the cases had to be addressed through the country report method.

From the very beginning, the Commission made an extensive use of *in loco* visits to prepare its country reports. This contributed to raising the public profile of the Commission, as it called the attention of the press during the visits, giving also visibility and legitimacy to the victims and their relatives. Not only did the Commission gather in these visits further information about denunciations already lodged, but it also received many additional ones from victims who had been afraid to do so before or had not been able to send their complaints to the Commission (at a time when international communications were much more expensive and difficult than today). Even in situations when a state banned a visit by the IACHR, this would call public attention and would expose the state at an international level.

The original OAS goal of enacting a general treaty on human rights was finally achieved in 1969, with the adoption of the American Convention on Human Rights ("the Convention").<sup>5</sup> In this way, the OAS followed the same path as the UN, which three years before (and also after two decades of promises) had passed the International Covenant on Civil and Political Rights (ICCPR)<sup>6</sup> and the International Covenant on Economic, Social and Cultural Rights (ICESR).<sup>7</sup>

Looking back after almost 40 years since the adoption of the Convention, it seems surprising that such an instrument was enacted by the OAS at a time when many states were living under authoritarian rule. This is especially surprising if one considers that today, in a context of civilian governments, not a few feel uncomfortable under the parameters of this Convention. So one keeps asking, how did the states decide to adopt the Convention in 1969?

In this respect, two tentative answers could be provided. The first is that a significant number of states may not have had the intention to ratify the Convention, and their consent to adopt it was only

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4 This provision has remained throughout the different Rules of Procedure enacted by the Commission over the years. It is currently established by the Rules of Procedure of the Inter-American Commission of Human Rights, Art 39 that entered into force in 2001.

5 American Convention on Human Rights (22 November 1969) 1144 UNTS 123 [the Convention].

6 International Covenant on Civil and Political Rights (16 December 1966) 999 UNTS 171 [ICCPR].

7 International Covenant on Economic, Social and Cultural Rights (16 December 1966) 993 UNTS 3.

a rhetorical gesture. In fact, it took nine more years for the Convention to enter into force, and this occurred as a result of the decision of civilian governments that replaced the dictatorships in some countries.

A second answer is that many states conceived the Convention's provisions in the same way that they have historically understood the Bills of Rights contained in their constitutions since they gained independence in the 19th century: as non-operative clauses. If tribunals at the domestic level had failed to enforce these rights, why should states care about a potential enforcement by distant, international bodies? For other groups of states, perhaps the Convention was envisioned more as a direction to follow in the long run rather than as an instrument establishing legally binding rules. This may also explain why, according to the Convention, the newly established Court would require an additional declaration on the part of a state to have contentious jurisdiction for cases concerning that country.

While the Convention regulates in detail the guarantees concerning civil and political rights, it does not do the same regarding economic, social and cultural rights. As for the first type of rights, the Convention gives more protection than the ICCPR. This conclusion can be reached by comparing the provisions of both treaties concerning due process of law, judicial guarantees, freedom of expression and other rights. This is barely a surprise, because the broad spectrum of regimes within the UN states led to a series of agreements that were not always very protective for human rights. However, it is surprising that the Convention also provides more protection for some rights than the European Convention on Human Rights,<sup>8</sup> for instance freedom of expression.<sup>9</sup>

The Convention has only minor reference to economic, social and cultural rights. They are mentioned in just two provisions<sup>10</sup> and for several decades these were interpreted as preventing the presentation of individual claims. Even at the level of country reports, the issue of economic, social and cultural rights began to be addressed from the late 1970s. An additional Protocol on these rights was later adopted (see below).

The adoption of the Convention in 1969 and its entering into force in 1978 strengthened the System, since then there would be two bodies in charge of supervising states' behaviour on these

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8 European Convention for the Protection of Human Rights and Fundamental Freedoms (4 November 1950) 213 UNTS 221 [ECHR].

9 It cannot be overlooked that the European Convention was adopted in 1950, that is, 19 years before its American counterpart. Therefore, the progressive development of international human rights law partially explains this situation. It is only a partial explanation, because it is indisputable that democracy and enforcement of rights prevailed in 1950 in the countries that adopted the ECHR to a much larger extent than in the countries which adopted the Convention in 1969. Therefore, the states of the Americas set for themselves higher goals, despite the fact they were more distant from enforcing those standards than the Western European states had been in 1950.

10 The Convention, above n 5, Arts 26 and 42.

matters: the Commission and the Court. As provided in the Convention, their mandate would not be restricted to deal with gross, systematic violations committed by dictatorships, but it would encompass the states' behaviour regarding a wide range of rights, in order to enhance rule of law throughout the Americas and to ensure that democratic systems with independent judiciaries would effectively enforce human rights. It is important to emphasise this point, because in the 1990s a number of civilian governments, feeling uncomfortable with the Commission's supervision, would argue that this organ's function was to deal with the abuses committed by dictatorial regimes.

Despite these advances in the legal framework of the System, an overwhelming part of the Commission's work until the late 1980s was still devoted to confronting systematic violations. The scale of the abuses (as shown by the practice of forced disappearances in Guatemala since the 1960s until the 1990s, in Argentina and Chile in the 1970s and in Peru in the 1980s and early 1990s), unprecedented in Latin America in the 20th century, required such a dedication on the part of the IACHR.

Given this context, the Commission continued to make permanent use of country reports, which remained its main task throughout the 1980s. A paradigm case in this regard was the IACHR's visit to Argentina in 1979 and the subsequent report published in 1980. This report and the facts that surrounded its preparation not only produced a significant impact in the OAS, but also at the UN, representing a key factor to end the thousands of forced disappearances that had taken place in that country over the previous years.

The Commission spent 17 days in Argentina, a fact that was by itself significant, as this was much longer than its usual *in loco* visits. During the visit, the IACHR obtained information that several dozens of people were being held in clandestine detention in an isolated area of an otherwise public prison. It also obtained the names of some of those detained. When the Commission went to the prison, it asked the authorities for a list of the people jailed there, which was then provided. The clandestine detainees were not on the list. Without making the prison authorities aware of the information it had already obtained about these prisoners, the Commission then asked to look at all the prison's areas. The authorities were at first reluctant, but they finally had to concede, in the hope that they would still manage to prevent the Commission from having contact with the clandestine prisoners. At some time the members of the IACHR heard people screaming from behind a wall "we are here, we are here!" ("¡Estamos aquí, estamos aquí!"). Confronted by this evidence, it became inevitable for the prison's authorities to allow the Commission to meet with about 30 clandestine prisoners, who would have otherwise swelled the list of the disappeared.<sup>11</sup>

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<sup>11</sup> For a detailed description of the discovery of these prisoners, see Buergenthal, Norris and Shelton "Discovering Disappeared Persons: A Staff Member Notes" in *Protecting Human Rights in the Americas* (International Institute of Human Rights, Strasbourg, 1990) 299-301.

Until this visit, the dictatorship in Argentina had systematically denied that it was practising the clandestine detention of persons as well as its responsibility in the massive forced disappearances that had taken place. When the Commission informed the OAS General Assembly about its findings, this produced a tremendous debate, to the point that the delegation from Argentina threatened to withdraw from the OAS if the General Assembly issued a resolution condemning it for this situation. Finally, the Assembly adopted a general resolution<sup>12</sup> condemning the practice of this crime but without mentioning Argentina, but the Argentinean Government had already been exposed internationally as a result of the Commission's findings. This visit produced a similar impact at the UN, which had not previously confronted Argentina on this matter, leading to the creation of a Working Group on Forced Disappearances, whose main initial task was to investigate the situation in this country. Overall, the Commission's visit and the subsequent report saved many lives, including those of the clandestine prisoners and many other potential victims, as this crime ceased almost immediately.<sup>13</sup>

Another country report which had a significant impact was that published on Nicaragua in the late 1970s, during the Somoza dictatorship. Anastasio Somoza himself pointed out in a book written in his exile after leaving power that this report was a trigger factor for his defeat.<sup>14</sup>

Notwithstanding this principal focus on the country reports, the Commission continued working on specific cases. Due to the nature of the violations denounced through this mechanism, the Commission designed some methodologies of work that fitted well to them. However, while these methodologies proved to be instrumental in such context, later they would make it more complex for the Commission to adapt to new circumstances, when civilian governments became the rule in the OAS. For instance, well beyond the entering into force of the Convention, the IACHR still made wide use of the assumption of responsibility in cases where the state did not litigate in a serious manner.

Another example is the friendly settlement of cases. This is a mechanism established by the Convention, by which a case can be closed by an agreement between complainants and the state. The agreement could consist of pecuniary compensation, public recognition of the abuses and other

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12 Presentation at the OAS General Assembly by Carlos Washington Pastor, Minister of Foreign Affairs of Argentina, cited at *Convicción* (21 November 1980) 12-13.

13 Forced disappearances in Argentina stopped abruptly in October 1979, that is, one month after the Commission's visit. From then on, the IACHR did not receive further complaints about disappearances in this country. About the visit's impact, see David Weissbrodt and Maria Luisa Bartolomei "The Effectiveness of International Human Rights Pressures: The Case of Argentina, 1976-1983" (1991) 75 *Minn L Rev* 1009; Iain Guest *Behind the Disappearances: Argentina's Dirty War against Human Rights and the United Nations* (University of Pennsylvania Press, Philadelphia, 1990); Tom Farer (President of the Commission at the time of the visit) "The OAS at the Crossroads: Human Rights" (1987) 72 *Iowa L Rev* 401.

14 Anastasio Somoza (as told to Jack Cox) *Nicaragua Betrayed* (Western Islands, 1980) cited by Farer, above n 13, 402.

forms of symbolic reparation, as well as the creation of internal mechanisms to conduct a full investigation or to prevent similar situations and trigger legislative reform.<sup>15</sup> Because many states did not actually engage in the litigation of individual cases at the Commission, this organ often had no way to seek a friendly settlement. Even in those cases in which a state did litigate, given the context of massive, systematic violations, it was often inconclusive for the Commission to seek such a settlement, as the violation was part of a general, deliberate trend, and a state willingness to reach a settlement may not have been more than a token gesture.

The Court ratified the policy of the IACHR not to seek friendly settlement in the 1980s case of *Velásquez Rodríguez*,<sup>16</sup> when Honduras argued that the Commission had violated the Convention by not seeking a friendly settlement between the parties. In interpreting the Convention, the Court stated that it was not mandatory for the IACHR to seek such settlement in all cases, allowing it some discretion (but not arbitrariness).<sup>17</sup> The problem was that the Commission was slow to react to the new circumstances, and it did not resort to the option of seeking a friendly settlement almost at all for a number of years, regardless of whether the abuse denounced was part of a systematic policy of a state.<sup>18</sup>

Other practices by the Commission during this period included development in its discretion, such as regarding the time to formally open a case after a claim was lodged, and, generally speaking, about the timing of the litigation;<sup>19</sup> its lack of standard procedures to determine whether to call for public audiences during litigation; and the usual practice of postponing the decision on admissibility until a final decision on the case was made. These practices had been developed at a time when most states did not play an active role in litigation and many complainants had no way to effectively follow up their claims. The problem was that the IACHR continued with these practices well into the 1980s regarding states that did engage in litigation, and even into the 1990s when the context was very different.

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15 Patricia Standaert "The Friendly Settlement of Human Rights Abuses in the Americas" (1999) 9 *Duke Journal of Comparative and International Law* 519, 519-542.

16 *Velásquez Rodríguez Case* Inter-American Court of Human Rights, Preliminary Objectives (26 June 1987).

17 *Ibid.*, 19-20. See Standaert, above n 15.

18 Among the few exceptions was the *Miskitos* case against Nicaragua: the Commission did try to reach a friendly settlement in this case from the early 1980s, but it did not succeed in the end. See Hurst Hannum "The Protection of Indigenous Rights in the Inter-American System" in David Harris and Stephen Livingstone (eds) *The Inter-American System of Human Rights* (Oxford University Press, New York, 1998) 323, 329.

19 See Ariel Dulitzky "La Duración del Procedimiento: Responsabilidades Compartidas" in Juan Méndez and Francisco Cox (eds) *El Futuro del Sistema Interamericano de Protección de los Derechos Humanos* (Inter-American Institute of Human Rights, San José, Costa Rica, 1998) 363.

Another aspect that shows the difficulty for the Commission to adapt to the emerging new circumstances in the 1980s was the relationship with the Court. In fact, it took seven years for the IACHR to send the first cases to the Court.<sup>20</sup> The Commission's initiative in this matter was, and still is, decisive, as states (who are also allowed by the Convention to present cases before the Court) are reluctant to do so.<sup>21</sup>

These first cases also showed some inconsistencies within the System's procedural framework that have not yet been completely solved. Honduras, the state denounced before the Court, had hardly participated in the litigation of the cases before the Commission, so most of the arguments presented to the Court to rebut the evidence had not been previously raised during the procedure at the Commission. Because the Convention provides only a few general rules about evidence, the Court had to construe some rules. The Court rejected the Commission's petition to accept the evidence already accepted at the Commission's procedure when it had not been controverted by the state at that stage. The problem was that the Court started developing its jurisprudence on this key matter (with an impact that continues today) in a somehow abnormal situation from the point of view of the Convention (a state that did not engage in the procedure at the Commission). One can wonder whether the Court would have reached a different conclusion had the context of these first cases been different, with active state participation.

Further obstacles for a normal development of the System arose in this first group of contentious cases before the Court, due to the fact that Honduras lacked at that time a judicial system effective in dealing with grave human rights violations, especially when they had been committed in the context of a deliberate systematic state policy. Although by the time the cases against Honduras were at the Court a policy of disappearances no longer existed in that country, an environment of impunity for grave crimes still persisted, and open hostility occurred against the witnesses who took

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20 They were the *Velasquez Rodriguez, Fairen Garbi* and *Solis Corrales* and *Godinez Cruz* cases, all presented by the Commission against Honduras denouncing the forced disappearances of these persons. For an analysis of these cases, see Juan Méndez and José Miguel Vivanco "Disappearances and the Inter-American Court: Reflections on a Litigation Experience" (1990) 13 *Hamline L Rev* 507; see also Claudio Grossman "Disappearances in Honduras: the Need for Direct Victim Representation in Human Rights Litigation" (1992) 15 *Hastings Int'l & Comp L Rev* 363.

21 The single exception has been Costa Rica, which lodged a case in 1981; however, the Court declined jurisdiction due to the lack of a prior decision by the Commission on the merits of the case (according to the Convention, a case has to go through the Commission's individual system procedure before being presented to the Court). *In the Matter of Viviana Gallardo and Others* Inter-American Court of Human Rights (15 July 1981) G101/81. The second case arrived at the System 25 years later, when, in 2006, Nicaragua lodged a complaint against Costa Rica at the Commission. This body, however, declared the case inadmissible in 2007, thus it never reached the Court. The inadmissibility was due to lack of prima facie grounds for a violation, as the Commission considered that the complaint described in very generic terms the alleged discrimination of Nicaraguan nationals living in Costa Rica by this state. See *Nicaragua v Costa Rica* Inter-American Commission on Human Rights Report (8 March 2007) N°11/07, Interstate Case 01/06.

the stand to testify against the state. This would lead to the assassination of two of the witnesses: Miguel Angel Pavón and José Isaías Vilorio.<sup>22</sup>

On the positive side, it is interesting to observe how the Court made use of its advisory function to contribute to stopping grave violations in the 1980s.<sup>23</sup> In principle, the Court's function is conceived of as a means to interpret law, but as the tribunal issued some Advisory Opinions at very crucial moments, their impact was in effect much more immediate and wide. For instance, in the early 1980s Guatemala was executing a significant number of people for crimes which had lighter penalties at the time that the country ratified the Convention. The Convention, in the same manner as the ICCPR, somehow "freezes" the application of the death penalty, by providing that a state cannot extend its application to crimes with lighter penalties at the time of the ratification. In an Advisory Opinion, the Inter-American Court declared that a reservation to the treaty such as the one that Guatemala was invoking did not allow the extension of the death penalty.<sup>24</sup> As a result, the state stopped the executions and modified its legislation.<sup>25</sup> In the same years, something analogous occurred regarding Nicaragua, after the Court interpreted the Convention in an Advisory Opinion as banning the suspension of habeas corpus in states of emergency.<sup>26</sup> It has to be noted that none of these Opinions were explicitly directed to any country (they cannot, according to the Convention), but even so Guatemala and Nicaragua modified legislation and practices.

During the 1980s the Court also worked on several other issues in the context of its advisory role, including the mandatory affiliation of journalists and its impact on freedom of expression, the naturalisation of persons, and the use of treaties from other human rights systems by Inter-American organs. By the end of the 1980s, an additional Protocol to the Convention was adopted.<sup>27</sup> This Protocol refers to economic, social and cultural rights. It contains a long list of such rights, although it established that only a few of them could be the basis for lodging complaints before the Commission. This Protocol entered into force in 1999.

It must be noted that at the time the OAS political organs were comprised both by civilian governments and dictatorships, strong debates on human rights issues usually took place, especially

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22 See Méndez and Vivanco, above n 20, 557-558.

23 The Court has two basic functions: to decide on contentious cases, and to issue Advisory Opinions.

24 Inter-American Court of Human Rights, Restrictions to the Death Penalty (American Convention on Human Rights, Arts 4(2) and 4(4)) Advisory Opinion 3 (8 September 1983).

25 See Charles Moyer and David Padilla "Executions in Guatemala as Decreed by the Courts of Special Jurisdiction in 1982-1983: A Case Study" (1984) 6 Hum Rts Q 507.

26 Inter-American Court of Human Rights, Habeas Corpus in Emergency Situations Advisory Opinion 8 (30 January 1987).

27 Additional Protocol to the American Convention on Human Rights in the area of Economic, Social and Cultural Rights (17 November 1988) OEA/Ser.L.V/II.82 doc 6 rev 1, 67.

on occasion of the Commission's country reports. Not only the reports themselves were discussed at the General Assembly, but also the actual human rights conditions in the countries reported. It was also a practice for the General Assembly to issue a specific resolution about a country reported.

In fact, there was a sort of dichotomy between the military and the civilian regimes represented at the OAS during this period and this had consequences on the level of attention given to these two types of states. This was because, compared with the systematic violations to the right to life and other basic rights committed by many of the military regimes, abuses by civilian governments did not seem so significant; the latter were not actually under close scrutiny.

A turning point seems to have been a report on several consolidated cases published by the IACHR in 1990.<sup>28</sup> The report stated that the electoral system of Mexico was in contravention of the Convention. This produced a tremendous reaction from that country against the Commission. Since the Commission's inception, Mexico had been on the side of the civilian governments, supporting the IACHR, and denouncing the violations of human rights by a number of dictatorships.<sup>29</sup> However, as of 1990, the context had changed and this affected Mexico. Almost all dictatorships had ended (Paraguay in 1989, Chile in early 1990); the civil war in Nicaragua had come to a conclusion and with it the end of the Sandinista Regime; the armed conflicts in El Salvador and Guatemala seemed to be about to end; and only in Colombia and Peru did the situation look worse than in the past. The Berlin Wall had fallen the previous year and had contributed to diminishing some of the tensions and polarisations in Latin America. Also as a result of the end of the Cold War, Canada decided to join the OAS.<sup>30</sup> For the first time, all the OAS active members were states governed by civilian governments.<sup>31</sup> A country like Mexico, which had not been closely supervised in the past, became a subject for analysis. The same would start to happen to other countries. This would have a significant impact in the relationship between the OAS political organs and human rights organs from then on.<sup>32</sup>

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28 *IACHR Annual Report 1989-1990* Report on Cases N°s 9768, 9780 and 9828 (Mexico) 101.

29 Farer, above n 13, 405, notes that, along with Venezuela, Mexico was the state that gave the strongest support to the Commission in the late 1970s and early 1980s.

30 See Andrew Cooper and Thomas Legler *Intervention Without Intervening? The OAS Defense and Promotion of Democracy in the Americas* (Palgrave MacMillan, New York, 2006) 9 and 36-37.

31 I am not considering Cuba here, as it is not an active OAS member, since it was suspended from the organisation in 1962.

32 For a comprehensive study about the System until the late 1980s, see Cecilia Medina *The Battle of Human Rights: Gross, Systematic Violations and the Inter-American System* (Martinus Nijhoff, Dordrecht, 1988).

### **III TRANSITIONS TO DEMOCRACY AND THE EVOLUTION OF THE SYSTEM**

#### **A Background**

In the early 1990s, new circumstances at the OAS changed the expectations of NGOs that did litigation or other work at the System. To some extent, there was optimism about a potential strengthening of the System, based on the overwhelming presence of civilian governments. A more diverse docket of cases at the Commission and Court was expected, and an increasing number of cases were thought to be handled by the latter. It was envisioned that the use of friendly settlements would become more frequent, and that the same would happen regarding cautionary and provisional measures.

An enhancement of participation of civil society at the System and, more generally, at the OAS was expected; in particular, there was hope that victims would soon achieve full autonomy through the Court's contentious proceedings, and that a kind of consultative status at the OAS could be granted for NGOs. There were different levels of optimism about a potential strengthening of the judiciaries throughout the continent and about an increased reception of international human rights standards in domestic legislation.

Generally speaking, it was envisioned that states would have a more active role in litigation at the System, and that the enforcement of the System's decisions would be enhanced.<sup>33</sup> In conclusion, at the beginning of the 1990s there were some prospects for change. Below, I will analyse whether substantial changes have actually taken place.

#### **B Developments at the Inter-American Human Rights Commission**

The transitions to democracy in the Americas brought about a series of changes in the work of the Commission. As a result of them and of the decline of systematic violations to the right to life in many countries of the region, the functioning of this organ has experienced significant changes. In fact, over the last 15 years or so, the handling of cases has become the main task of the Commission, with country reports losing the centrality they used to have, notwithstanding the fact that they maintain their importance for a number of states where serious conditions persist. Furthermore, the Commission established in the 1990s thematic rapporteurships as a new function.

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33 Several of these ideas were presented, for instance, at a roundtable about the System at the Latin American Studies Association Conference (Los Angeles, 1992). Participants included representatives from NGOs active in the System, such as the Centro para la Acción Legal en Derechos Humanos, the Center for Justice and International Law, the Colombian Section of the Andean Commission of Jurists (currently the Colombian Commission of Jurists), Human Rights Watch, and the International Human Rights Law Group (currently Global Rights).

### *1 Case system*

During the period in which authoritarian regimes prevailed in the Americas, states rarely participated in litigation at the Commission, or did so to a limited extent. In addition, as most of the violations confronted at that time by the Commission were massive and systematic, the mechanism of cases usually was not effective.

However, with the transition to democracy the context changed, as did the role of the majority of states in litigation, which became active, and the nature of the violations, which became more feasible for confrontation through the case system. These changes, in turn, had the effect of producing a series of procedural transformations at the Commission. Because the Convention provides only generic rules of procedure, the Commission had to develop a series of reforms.

As a general trend, in the new context the litigation at the Commission has become more formal, as opposed to the loose rules and practices that used to govern it. This more formal approach does not mean that the proceedings are now as formal as those at a court, as it continues to be semi-judicial. Over time, this has been reflected, for instance, in the establishment of a series of terms for the proceedings, set by the Rules of Procedure of the Commission, which have been amended to an important extent during the last two decades. However, so far this has not fast-tracked proceedings, as the complexity of the Commission's caseload has increased.

One important step toward a more formal approach has been the distinction of two stages during the proceedings: a stage of admissibility and another on the merits. Although the Convention makes reference to admissibility and merits, it does not explicitly provide that they have to be treated separately. The practice of the Commission until the mid-1990s consisted of issuing a single decision covering both aspects. However, from 1996 the opposite became the rule, as today the Commission issues first a decision on admissibility and then another on the merits. This is also set out in the new Rules of Procedure.<sup>34</sup> The Commission left open the possibility of deciding both aspects in a single resolution, especially but not limited to cases of forced disappearances and others of an urgent nature.

The adoption of this two-stage approach has not been immune from criticism. Some critics argue that, while contributing to the formality of the proceedings, the distinction between admissibility and merits has a flaw, consisting of the delay of justice. The proceedings have become adversarial, with states taking part in litigation in virtually all cases and victims represented by NGOs or attorneys. This has an effect on the evidence presented before the Commission: the amount and complexity of the proof submitted has increased exponentially.

The new context has also facilitated in making friendly settlements operative. Although established by the Convention, this mechanism was virtually impossible to apply when states

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<sup>34</sup> Rules of Procedure of the Inter-American Commission on Human Rights, Arts 30-37.

violated human rights as a deliberate policy on a grand scale and did not engage actively in the litigation. With these features changing, the chance for friendly settlement has increased. In any event, the will to reach these agreements presents wide variations depending on the states involved and even the changes of government in a state.

In the new context, the Commission has increased in a significant manner the number of cases that it submits to the Court. While the 1990s saw a development in this regard, real change occurred as a result of the new Rules of Procedure, which entered into force in 2001, which provide that when a state does not comply with a decision on the merits, as a general rule, the Commission will send the case to the Court.<sup>35</sup> The Rules of Procedure also establish a list of aspects to be considered in reaching a decision to submit a case, namely, the position of the petitioners, the nature and seriousness of the violation, the need to develop or clarify the jurisprudence of the System, the potential impact at the domestic level, and the evidence available at the case.<sup>36</sup>

The effectiveness of the decisions by the Commission has been strengthened since transitions to democracy began in the Americas. However, this does not mean that a high rate of compliance has been achieved. This rate varies significantly from one state to another. The fact that the Commission is now sending cases on a regular basis to the Court has contributed to an increase of the rate of compliance of its own resolutions to some extent, as states try to avoid being subject to a complaint at the tribunal. This is applicable only to those states which have recognised the Court's jurisdiction (approximately two-thirds), and even they fail to follow the Commission's decisions quite frequently.

For the benefit of the Commission, it has to be noted that its decisions become at times enforced through indirect mechanisms, especially when domestic courts apply the Commission's jurisprudence, a process that began in the 1990s and has been growing since then.

## *2 Country reports*

While not as important as in the past, the preparation, publication and follow-up of country reports continues to be a key tool for the Commission. This is because despite the process of democratisation in the region, some authoritarian regimes persist, the rule of law is weak in a number of states, and widespread human rights violations continue to occur.

The Commission prepares and publishes country reports in two ways. The first, through a report dealing exclusively with one country, may be very extensive (ranging from 150 to 300 pages) and is usually preceded by a visit to the respective state, unless that state does not authorise the IACHR to enter, in which case the Commission will prepare a report anyway if it decides to do so. The second consists of a brief report, usually around 20 to 30 pages, that is included in the Commission's

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<sup>35</sup> Ibid, Art 44.

<sup>36</sup> Ibid.

Annual Report. Generally, these shorter reports serve to follow up on reports devoted exclusively to a single country. They may or may not be preceded by a visit of the Commission or some of its members.

In the 1990s, the Commission's function of producing country reports was challenged by a number of governments, which asserted that that was a tool appropriate for the Commission to deal with dictatorships but not with democratic regimes.<sup>37</sup> The IAHCR, though, maintained that this function was important, regardless of the kind of political regime of the states member to the OAS, considering that the key issue was the nature and extent of the abuses. Additionally, the Commission made explicit for the first time the criteria according to which it would decide what states would be subject to reports, which are:<sup>38</sup>

- a) States ruled by governments that have not come to power through free, genuine and periodic popular elections by secret ballot, according to internationally accepted norms;
- b) States where the free exercise of the rights enshrined in the Convention or the American Declaration have been in effect suspended, totally or partially, by the imposition of exceptional measures such as a state of emergency, state of siege, prompt security measures and others;
- c) When there is reliable evidence that a state commits gross and massive abuses of human rights as guaranteed in the Convention, American Declaration or other applicable human rights instruments. Violations of rights that may not be suspended, such as extra-judicial executions, torture and forced disappearances, are of special concern in these cases;
- d) States that are in a process of transition from any of the three above-mentioned situations;
- e) When there are interim or structural situations that grossly and seriously affect human rights, including grave situations of violence, serious institutional crises, institutional reform processes with a serious negative impact on human rights, or grave omissions in the adoption of measures necessary to make human rights effective.

Furthermore, the Commission adopted a practice of sending a copy of the complete draft report to the state that is the subject of that report. In this way, the state may make the observations it considers relevant. The Commission later prepares a final version, dealing with the observations of the state according to its judgment.

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37 Felipe González "La OEA y los derechos humanos después del advenimiento de los gobiernos civiles: expectativas (in)satisfechas" in Felipe González (ed) *Derechos Humanos e Interés Público* (Universidad Diego Portales, Santiago, 2001) 147.

38 The first four of these criteria were first issued by the Commission in its 1997 Annual Report. The fifth was added in its 1998 Annual Report.

The substantial component of the country reports has continued the process of widening the scope of interest, addressing different types of rights, including civil, political, economic, social and cultural rights, and emphasising the monitoring of the situations of persons and groups that may be vulnerable, such as women, indigenous peoples, afrodescendants, migrants, those living with disabilities and children.

The preparation of country reports by the Commission continues to make sense in certain situations. As such, this role has been reaffirmed by the IACHR. The reports fulfil needs that are not satisfied by the processing of individual cases alone, particularly when it is necessary to examine the general human rights situation in a country, to verify progress or setbacks, to monitor certain rights, or to make suggestions to state authorities (who on occasion request these reports themselves).

It has to be observed that the country reports of the Commission and those prepared by UN bodies are complementary, and it is generally suitable for civil society to attempt both routes. Unlike the case system, where duplication is not allowed (for the benefit of a consolidated jurisprudence), no such incompatibility exists between reports from different inter-governmental human rights organs concerning the same country; quite the contrary, they reinforce each other.

### *3 Thematic rapporteurships*

Since the 1990s the Commission has also developed thematic rapporteurships. Currently there are seven such mechanisms, which refer to freedom of expression, women's rights, children's rights, indigenous rights, the rights of persons deprived of liberty, the rights of migrant workers and their families, and the rights of afrodescendants.

These rapporteurships, however, cannot be compared to those of human rights organs at the UN, which are stronger. This is because with the exception of that of freedom of expression, the rapporteurships at the Commission are part-time only, each one led by a Commissioner, who serve on a part-time basis at the Commission and have many roles to play. The Special Rapporteurship on Freedom of Expression is different because it has a full-time professional in charge and its own staff (this rapporteurship, however, relies entirely on funds external to the OAS).

So far, the usual tasks of the rapporteurships at the Commission have consisted in issuing some thematic reports from time to time (usually every several years), doing some promotional work, and conducting some follow-up on the most relevant cases on the respective matter pending. At the Commission, thematic rapporteurships currently have a limited impact. This is the result of deliberate priorities on the part the Commission, which keeps the investigation and decision of cases and the preparation of country reports as the mechanisms of special concern. It does not seem likely that thematic rapporteurships will be significantly enhanced in the absence of specific, additional funding for them.

#### 4 *The Commission's other functions*

In addition to the previously described functions, the IACHR undertakes initiatives of promotion of human rights, as well as other tasks.

##### (a) Promotion of human rights

This work, which the IACHR engages in through seminars, publications, internships and other means, has basically been developed in three broad areas: the dissemination of human rights in general, the promotion of the System, and education on the necessity of incorporating human rights into domestic law.

The first of the aforementioned areas refers to the work carried out by the Commission regarding the need for citizens of the Americas to become aware of their own rights. This is an effort aimed at emphasising human dignity, the essence of human rights. This path intends human rights not to merely remain a legal/normative institution, but rather to become a reality within the culture of the societies of the Americas. This is closely connected to the effectiveness of these rights, given that if the victims of violations are not fully aware of them, impunity is likely to prevail. It is also tied into support for genuinely democratic systems; in effect, the awareness of rights is a galvanising factor in citizen participation, as well as in citizen control of public administration.

The second area refers to the work that the Commission has undertaken in making the region's inhabitants aware of the existence of the System, as well as of the basic steps that must be taken to file complaints with the Commission. Given that the Commission lacks the means to carry out investigations *motu proprio*, it depends upon civil society to find out about human rights violations. A large part of the IACHR's promotional work has concentrated on this aspect, due to the Commission's direct interest in ensuring that civil society is well informed and knows what to do in cases of human rights abuses.

The third area consists of raising the awareness about the need for incorporating human rights into domestic legal systems. The international bodies play subsidiary roles in the understanding that, under normal conditions, domestic institutions are in a position to resolve situations of rights violations most quickly and efficiently. This is an aspect that the Commission has also placed emphasis on, given that it is the party most interested in ensuring that the System is used only in cases of real necessity.

Nonetheless, these activities cannot be understood as anything but a complement to the central tasks of the Commission: the tasks of protection of human rights. There are numerous academic, non-governmental and state bodies that carry out human rights promotional and educational work, and for that reason, the role of the IACHR in this respect is not unique. In contrast, as a body for the protection of such rights, the Commission's role is irreplaceable, since no other entity (not even the Inter-American Court of Human Rights, which does not possess the same functions as the

Commission) has the same role as the IACHR. Thus, in spite of the fact that at some points in its history the Commission has been pressured by some states to concentrate on promotional activities, it has continued to maintain the work of protection at the crux of its action, making advocacy a complement.

(b) Other activities of the IACHR

The Commission has a very broad mandate, for which it is authorised to carry out a diverse range of initiatives. Standing out among them are its participation in the preparation of human rights treaties and declarations in the OAS and the exercise of an advisory function.

In relation to the first of these aspects, the Commission participates along with the political bodies of the OAS in the preparation of Inter-American human rights instruments. In the case of some treaties and declarations, the IACHR has played a very important part; at other times, the political bodies of the OAS have not followed closely the proposals of the Commission.

As for the second aspect, the Commission is authorised to receive inquiries from the OAS political bodies and states on issues relating to human rights. Recently the Commission has been giving greater attention to this function, having rendered opinions on the issue of quotas for women to guarantee their representation in political systems, and engaging in the study of affirmative action for African-descendant populations.

***C Developments at the Inter-American Court of Human Rights***

The Court has experienced significant transformations during the process of democratisation in states that belong to the System.

*1 Role of the victims at the Court*

In 1996, through an amendment of its Rules of Procedure, the Court recognised the victims' autonomy during the phase of reparations.<sup>39</sup> This meant that, while continuing to be "attached" to the Commission as advisors throughout the litigation of a case at the final stage, that of reparations, the victims' and their representatives would be able to act by themselves, without having to resort to the Commission for such purpose. This was an important step forward, as potential disagreements between the Commission and the victims regarding the nature, extent and enforcement of the reparations would no longer exist. In fact, from then on, the Commission would basically leave room for the victims and their lawyers to take the initiative.

In 2000, the Court moved further when it enacted new Rules of Procedure that allowed the victims autonomy from the beginning through to the end of litigation.<sup>40</sup> Once the Commission has

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<sup>39</sup> Rules of Procedure of the Inter-American Court of Human Rights, Art 23 adopted in September 1996.

<sup>40</sup> Rules of Procedure of the Inter-American Court of Human Rights (25 November 2000).

presented its complaint before the Court, the victims and their lawyers will participate by themselves at each phase of the process. The victims are notified of each written presentation submitted by the Commission and the state, have the right to present their own points of view in writing, and can intervene in an autonomous way at the hearings, submitting the evidence that they consider appropriate.

## *2 A trust for the victims?*

The reform described above, that significantly enhanced the role of the victims, created, nonetheless, new challenges. Among the most important is the matter of funding for the litigation, as victims cannot rely on the Commission for such purposes. The Court itself has established that a person who does not have access to justice guaranteed at the domestic level is exempt from the obligation to exhaust internal remedies.<sup>41</sup> Applying the same rationale, it would be a contradiction of terms if victims could not pursue their case at the Inter-American Court due to lack of funds.

However, seven years have passed and so far no mechanism has been created to deal with this matter. It has been suggested that a trust could serve to accomplish such an objective. Establishing a trust of this nature would go well beyond the competence – not to speak the finances – of the Court, and it is a matter for the political organs of the OAS. Despite this, it seems unlikely that in the foreseeable future a trust will be created, so victims will have to continue relying on donations.

## *3 Speeding up the judicial proceedings*

As the Court began to deal with many more cases than in the past (as a result of the reform of its Rules of Procedure), it has envisioned new ways to avoid delaying justice. An important step has consisted in an increasing flexibility on the part of the Court concerning the stages of the proceedings. In particular, the Court no longer makes a clear-cut distinction between admissibility and merits. As a result, in a number of cases (especially for those at which there is no dispute about the facts but only on matters of law), the Court has held audiences at which both the admissibility of a complaint and its merits are been discussed, issuing a decision on both aspects.

Additionally, the Court has moved towards deciding by itself the issue of reparations rather than open a period for negotiations between the parties (as it did in some cases in the past). This is notwithstanding the possibility that the parties by themselves may reach such agreement during the judicial proceedings. One further aspect concerns the issue of evidence. The new Rules of Procedure provide room for validating the proof submitted at the proceedings in the Commission (provided that some requisites are met), as a way to save time and costs.<sup>42</sup> However, so far this rule has scarcely been applied, probably due to a longstanding tradition of not doing this validation.

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41 Inter-American Court of Human Rights, *Exceptions to the Exhaustion of Domestic Remedies* (American Convention on Human Rights, Arts 46(1), 46(2)(a) and 46(2)(b)) Advisory Opinion 11 (10 August 1990).

42 Rules of Procedure of the Inter-American Court of Human Rights, Art 44(2).

#### 4 *The scope of the human rights matters the Court deals with*

Since the late 1990s and especially early in the current decade, the Court has diversified its docket of cases. This is not a result of a decision on the part of Court (which cannot select the cases that it will decide), but of the Commission, that sends the cases. As a consequence, the Court has moved from a docket of cases consisting almost exclusively of systematic violations to the right to life and to the right not to be tortured, to a much more diverse one. In the last few years, the Court has decided a number of landmark cases concerning indigenous rights, due process, freedom of expression and children's rights. It has also decided cases on economic and social rights, although with less impact, as its jurisdiction is more limited in this regard.<sup>43</sup>

Concerning indigenous rights (a matter of utmost importance for states of the Pacific region), the Court has developed an extensive *corpus iuris*, especially regarding the scope of the right to property, and the way it should be interpreted under international law, which should go well beyond the individual component of this right. The Court has construed this right as including collective aspects, particularly in cases in which indigenous rights are at stake.<sup>44</sup> In addition, in this type of case the Court has addressed the issue of cultural rights, highlighting the duties of the states to safeguard traditional cultures of indigenous peoples.<sup>45</sup>

This more diversified docket does not imply that the Court does not decide cases on systematic violations anymore. In fact, over the last few years the Court has strengthened its jurisprudence, emphasising the obligation of democratic regimes to confront abuses of that nature committed by prior Governments and the incompatibility of international law with amnesty laws for those crimes.<sup>46</sup>

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43 The Court has been criticised on this matter, because many authors consider it has shown a restrictive interpretation of its powers concerning economic and social rights. See Christian Courtis "La protección de los derechos económicos, sociales y culturales a través del artículo 26 de la Convención Americana sobre Derechos Humanos" in Christian Courtis, Denise Hauser and Gabriela Rodríguez (eds) *Protección Internacional de Derechos Humanos: Nuevos Desafíos* (Editorial Porrúa/ITAM, Mexico City, 2005) 56; Julieta Rossi and Víctor Abramovich "La tutela de los derechos económicos, sociales y culturales en el artículo 26 de la Convención Americana sobre Derechos Humanos" in Claudia Martin, Diego Rodríguez-Pinzón and José A Guevara B (eds) *Derecho Internacional de los Derechos Humanos* (Universidad Iberoamericana Mexico City, American University Washington College of Law and Distribuciones Fontamara, Ciudad de México, 2004) 457-478; Viviana Krsticevic "La protección de los derechos económicos, sociales y culturales en el sistema interamericano" in *Construyendo una Agenda para la Justiciabilidad de los Derechos Sociales* (CEJIL, San José, Costa Rica, 2004) 145.

44 *Mayagna (Sumo) Awas Tingni Community v Nicaragua* Inter-American Court of Human Rights Merits, Reparations and Costs (31 August 2001).

45 *Ibid.*

46 *Barrios Altos v Peru* Inter-American Court of Human Rights Interpretation of the Judgment on the Merits (3 September 2001); *Almonacid-Arellano et al v Chile* Inter-American Court of Human Rights Preliminary Objections, Merits, Reparations and Costs (26 September 2006).

### 5 *The enforcement of the decisions of the Court*

Generally speaking, there is a better record of compliance with Court decisions than with Commission resolutions. However, the balance regarding the Court is mixed. On the positive side, it is usual that states that are condemned by judgments of the tribunal do pay the monetary compensation established. However, it is not uncommon that this payment takes several years to become effective. On the negative side, states are typically reluctant or extremely slow to accomplish other reparatory components that a judgment of the Court may have. This may include, for instance, a full domestic investigation and sanction of the perpetrators of the violation; constitutional or legislative reforms and the creation of internal mechanisms to deal with certain type of violations.

In more extreme situations, states openly confronted the Court. In the late 1990s, as a result of a series of confrontations with the Commission and the Court over the issue of the death penalty, Trinidad and Tobago denounced the American Convention, thus the tribunal no longer has jurisdiction there. Also, Perú, during the Fujimori Government, stated that from then on it would not recognise the Court's jurisdiction. However, as Perú did not denounce the Convention, the Court, in interpreting this instrument, established that statements such as Perú's were not in accord with the Convention and decided that it maintained its competence. After the Fujimori Administration came to an end, the new democratic regime re-established the relationship with the Court on good terms.

### 6 *Advisory Opinions*

Due to the expanded work of the Court on contentious cases, its advisory role has lost centrality. Despite this, its Advisory Opinions have continued to provide understanding of the Inter-American instruments on human rights and treaties from other international human rights systems applicable in the Americas. Therefore, during the 1990s and the current decade, the Court has issued Advisory Opinions on a series of topics, ranging from children's rights to immigrant rights and freedom of expression. In addition, through this function, the tribunal has addressed some matters relating to procedural aspects of the System.<sup>47</sup>

### **D *Urgent Measures at the Commission and Court***

Both organs of the System have mechanisms to deal with urgent situations. They are called "cautionary measures" at the Commission and "provisional measures" at the Court. In parallel with the competence of these organs regarding specific cases, concerning these measures the Commission has jurisdiction over all states while the Court has jurisdiction only over those states which have made an explicit declaration of recognition of its jurisdiction for contentious cases.

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47 For a comprehensive study on the litigation and functioning of the Commission and the Court, see Héctor Faúndez Ledesma *El Sistema Interamericano de Protección de los Derechos Humanos: Aspectos Institucionales y Procesales* (3 ed, IIDH, San José, Costa Rica, 2004); see also Felipe González, above n 37.

Also, while any person or organisation based in a state member of the OAS can request a cautionary measure at the Commission, only the Commission can ask for a provisional measure at the Court.

The scope of the Commission's measures is larger than that of most international human rights organs, as it is not necessary that a case is pending before the Commission may have standing to request a measure. This practice was the result of the widespread forced disappearances and extra-judicial executions in the region (although forced disappearances are currently not as extended as in the past, they continued to occur regularly in some countries of the OAS).

Provisional measures can be requested by the Commission to the Court regardless of their connection with a case pending. In fact, the majority of requests by the Commission are a last resort when the Commission finds that a state is reluctant to enforce a cautionary measure. Unlike the situation of enforcement of decisions in specific cases, states' record of compliance with the Commission's cautionary measures is very high, particularly regarding the protection of life. As for the provisional measures adopted by the Court, only in a handful of decisions have the states not obeyed them.<sup>48</sup>

### *E Budget of the Commission and Court*

Both human rights organs have a chronic lack of enough funding from the OAS. Despite public appreciation of the OAS political bodies and many of its states' contribution to the Commission and the Court, their budgets have scarcely increased over the past fifteen years. The budget of the Commission represents 4 per cent of that of the OAS as a whole,<sup>49</sup> and that of the Court even less.

As a result, both human rights organs do make permanent efforts to obtain funding from other sources such as states and private foundations, doubling their current budgets. Among the problems of this practice, of course, is the difficulty in making mid- and long-term plans on the basis of these contingent external donations and the fact that they usually require the human rights bodies to accomplish tasks additional to those they are already bound to undertake according to their statutes and to other instruments.

## *VI CONCLUSIONS*

Despite an adverse context, in which many authoritarian regimes existed in the Americas for a long time, the Inter-American Human Rights System has been able to make significant contributions to the protection of such rights. Among the relevant factors in this regard are that the members of the human rights bodies of the System operate in their individual capacities (not as state representatives), support from some states, and that from civil society.

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48 See Juan Méndez and Ariel Dulitzky "Medidas Cautelares y Provisionales" in Courtis, Hauser and Rodríguez, above n 43, 67-93.

49 Comisión Interamericana de Devecos Humanos [www.cidh.org/](http://www.cidh.org/) (accessed 12 January 2009).

Later on, transitions to democracy took place in almost all countries of the region. In this context the System has also made valuable contributions, although it has had to undergo reform so as to adapt to the new situation. Emphasis has been placed on states to amend their legislation, jurisprudence and practices to make them compatible with international standards on a wide range of matters, as the System is no longer paying attention exclusively (as at the time of the dictatorships) to massive violations to the right to life and other basic rights, but to other kinds of abuses.

It has to be underlined that the Commission and Court complement each other. This ensures that the System enjoys several tools to address violations of rights in the Americas. Notwithstanding these advances, problems persist. In particular, there is a chronic lack of financing and there are insufficiencies in states' implementing the decisions made by the human rights bodies, especially by the Commission. However, the System is able, to some extent, to influence state behaviour, by promoting the application of its standards by domestic judges. To be sure, a regional human rights system cannot by itself produce a complete transformation of state practices, and, in the case of the Americas, many serious abuses persist. Co-operation of states is indispensable in this regard, as is strong participation from civil society.

