

Using the Inter-American System for Human Rights

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A Practical Guide for NGOs



GLOBAL RIGHTS is a human rights advocacy group that partners with local activists to challenge injustice and amplify new voices within the global discourse. With offices in countries around the world, we help local activists create just societies through proven strategies for effecting change.

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- We work through field offices in Asia, Africa, Latin America, Europe, and in the United States, partnering with local human rights advocates to strengthen their effectiveness in combating abuses in their countries
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INTRODUCTION

For more than twenty years, non-governmental organizations (NGOs) have played an increasingly important role in promoting and protecting human rights at both the regional and international level. Today, more than ever, human rights advocates in the Americas are turning to the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights to protect human rights in our hemisphere.

Since the early 1990s, Global Rights (formerly the International Human Rights Law Group) has partnered with an international coalition of NGOs in the Americas to remove the traditional barriers to civil society participation at the Organization of American States (OAS). Global Rights is committed to expanding the access and influence of NGOs and grassroots organizations by encouraging them to effectively use the Inter-American system and to link their specific local advocacy or litigation efforts to broader campaigns. We also work with our partners to reinforce their regional efforts through community mobilization, public education, targeted media outreach, and other forms of local activism.

Global Rights offers this Guide as a tool for NGOs interested in promoting human rights at the regional level. By inviting our local partners from Brazil, Colombia, Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, Mexico, Nicaragua, United States and Uruguay to participate in the development of the Guide through various review and comment processes, we hope we have created a product that responds effectively to the broad spectrum of human rights issues that are being addressed across the hemisphere. We hope that the Guide will:

- Provide NGOs with an understanding of the formal procedures and the practical uses of the Inter-American system;
- Enable NGOs to make more informed choices when considering whether and how to intervene in the Inter-American system;
- Provide our NGO partners with some new ideas and practical strategies to use in advancing their own domestic agendas.

It is also important for NGOs to learn how multi-faceted advocacy efforts or campaigns that combine both local and regional activism can often be more successful in building in-country public support for the promotion and protection of human rights. This support can also be vital to the longer-term goal of successfully implementing the decisions rendered by the Commission or Court in their favor.

In this Guide you will read about the struggle of the indigenous peoples of the Autonomous Regions of the Atlantic coast of Nicaragua and the landmark decision on their land rights from the Inter-American Court. The *Awes Tingni* case provides activists in the autonomous regions of Nicaragua with an opportunity to use this decision to establish *collective* claims to traditional/ancestral lands.

We welcome your comments and hope this Guide will assist *your* organization in developing rich strategies to expand the fight for human rights in the Americas!

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I. A GENERAL OVERVIEW OF THE OAS WITH REGARD TO HUMAN RIGHTS

1.1 What is the OAS?

OAS is the acronym for the Organization of American States¹. The OAS was founded in 1948, and all of the states in the Americas, including those of Latin America, the Caribbean and North America, are members. It currently has 35 Member States. Of them, the only state that currently does not participate actively in the OAS is Cuba, having been suspended from exercising its rights in 1962.

The Organization was created by a treaty called the Charter of the OAS² (hereinafter “the Charter”), which has been revised on successive occasions. It sets forth the principal characteristics of the Organization and its organizational structure, as well as the rights and duties of its members.

The Organization of American States is headquartered in Washington, D.C., in the United States. Nonetheless, some of its bodies are located in other places, such as the Inter-American Court of Human Rights (hereinafter “the Court” or IACtHR³ with headquarters in San Jose, Costa Rica) and the Inter-American Children’s Rights Institute⁴ (with headquarters in Montevideo, Uruguay).

The OAS conducts work in the areas of diplomacy, politics, economics and human rights, as well as in other spheres.

Thanks to the efforts of NGOs and of various states, the forms of civil society participation in the OAS have broadened, since the Charter was signed.

1.2 Which are the OAS bodies that have an impact on human rights?

The Inter-American system is the name for the various regional organizations dealing with human rights. The Organization of American States has two main bodies concerned with the protection and promotion of human rights. They are the Inter-American Commission on Human Rights (hereinafter “the Commission” or IACHR)⁵ and the Court. These organizations are made up of specialists who act in their individual capacities, meaning that they do not represent the states of which they are citizens.

There are two political bodies of the OAS, the Permanent Council⁶ and the General Assembly⁷, which also play an important role with regard to human rights. In turn, several organizations operate within the Permanent Council, among which stands out the Committee on Juridical and Political Affairs (CJPA)⁸. These bodies are composed of the Member States of the Organization.

There are also other bodies in the OAS with specific mandates relating to human rights issues, such as the Inter-American Commission of Women⁹, the Inter-American Indian Institute¹⁰, the Inter-American Children's Institute¹¹, the Unit for the Promotion of Democracy¹² and the Inter-American Juridical Committee¹³. However, these organizations are focused essentially on work involving thematic study and promotion rather than on the work of protecting rights in the strict sense of the term.

1.3 What are the principal treaties and declarations of the OAS?

What is the difference between a treaty and a declaration?

Treaties are international legal agreements that establish rights and obligations for those who ratify them. Treaties may be signed by international organizations or by states. The latter is the case of all of the treaties of the OAS. Treaties are legally *binding* on those who sign them. Declarations are less formal agreements, but when they deal with a widespread international practice or peremptory norms of public international law (known as *jus cogens*), they are also legally binding. For example, international human rights bodies consider that a number of provisions of the American Declaration of the Rights and Duties of Man are binding for the aforementioned reasons. There are declarations that are solemn and those that are not. The former generally contain a preamble and a series of articles, and their adoption may take a long time, usually several years, as they are preceded by intense debate. For the above reasons, they are more important than those that are not solemn, which are briefer and often more specific. Nevertheless, the latter may be important within a certain context, for example, if they contain a pronouncement with respect to a particular country.

As mentioned, the OAS itself was created by a treaty, the Charter of the Organization. In order to join the OAS, a state must ratify the Organization's Charter. This Charter imposes certain obligations upon the States with regard to human rights; therefore, all Member States of the OAS have the duty to protect such rights, independently of whether or not they have ratified other treaties or declarations of the Organization.

The principal treaty on the subject of human rights is the American Convention on Human Rights (ACHR)¹⁴, also known as the "Pact of San Jose, Costa Rica", for having been adopted in that city in 1969. The Convention entered into force in 1978, when it was ratified by a sufficient number of states. The Convention governs the functioning of the Commission and the Court, and recognizes principal rights. In its original version, the Convention refers fundamentally to civil and political rights, such as the right to life, the right to personal liberty, freedom of expression, the right to elect public officials and to be elected to public positions, and so on.

Although the American Convention on Human Rights contains some references to economic, social and cultural rights (ESCR), they are very scant. Because of this, the Convention was later supplemented through a Protocol in the area of Economic, Social and Cultural Rights¹⁵, also called the “Protocol of San Salvador”, in reference to the place where it was adopted. This Protocol entered into force in 1998.

Another general human rights instrument is the American Declaration of the Rights and Duties of Man¹⁶. This Declaration was adopted in Bogotá at the time the OAS was founded in 1948. It contains a list of civil and political rights and of the most important economic, social and cultural rights.

A series of instruments on specific aspects of human rights has also been adopted within the framework of the OAS. Among the most important are the Inter-American Convention to Prevent and Punish Torture¹⁷, the Protocol to the American Convention on Human Rights to Abolish the Death Penalty¹⁸, the Inter-American Convention on Forced Disappearance of Persons¹⁹, the Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women²⁰ (also called the “Convention of Belém do Pará”) and the Inter-American Convention on the Elimination of All Forms of Discrimination Against Persons with Disabilities²¹.

It is important to emphasize that these treaties impose certain obligations on States. Articles 1 and 2 of the American Convention establishes that the States Parties to this Convention undertake not only to respect the rights and freedoms recognized in it, but also “to undertake to adopt, in accordance with their constitutional processes and the provisions of this Convention, such legislative or other measures as may be necessary to give effect to those rights or freedoms.” Other human rights treaties also impose this obligation to make the rights consecrated in them effective.

The Particular Characteristics of Human Rights Treaties: Requiring States to Protect Individuals

Generally, international treaties establish obligations among states. For example, a treaty between two neighboring states might determine common borders. In other instances, many states agree upon a treaty, establishing obligations among all of them (for example, in commercial affairs). Usually in these treaties when one state fails to comply with its obligations the other states may also be exempt from their obligations.

The peculiarity of human rights treaties is that they impose obligations upon the states regarding the manner in which they must conduct themselves in relation to the individuals who inhabit the territory under their jurisdiction. Consequently, each state undertakes before the other states to protect the human rights of those persons, and furthermore grants authority to certain bodies (such as the Commission and the Court) to supervise compliance with the treaty. In these treaties, non-compliance on the part of one state does not excuse the other states from performing their obligations.

1.4 The Inter-American Commission on Human Rights

The Inter-American Commission on Human Rights was established in 1959 and began operating in 1960. Since 1967 it has been a body recognized by the OAS Charter. Later, the American Convention on Human Rights established it as one of the main bodies of the Inter-American human rights system. The structure, jurisdiction and functions of the Commission are described in the American Convention and in the Commission's own Statute²² and Regulations²³.

The Commission is headquartered in Washington, D.C., in the central offices of the OAS. It is made up of seven members, elected by the states of the Organization. The commissioners are elected for a period of four years and may be reelected only once. There may not be more than one commissioner of the same nationality. They are elected in their individual capacities, not as representatives of the states of which they are citizens.

Why is it important that the members of the Commission act in an individual capacity?

Not all international human rights bodies are composed of persons who act in an individual capacity. For example, in the UN Commission on Human Rights the states themselves are represented, and diplomatic considerations may affect their decisions. In contrast, in the Commission, the fact that its members do not represent any state has contributed significantly to the effectiveness and independence of the Commission. As such, even during periods when there were many dictatorships in the Americas, the Commission investigated the conduct of these governments with regard to human rights and called on the international community to take measures to prevent the violation of such rights from continuing.

Functions of the Commission

The Commission has a series of functions that can be summarized as follows:

Prepare Reports

The Commission prepares reports on the human rights conditions in specific countries. These reports have generally referred to the overall situation, but they sometimes study only some specific aspects (for example, prison conditions in a particular country).

The Commission also prepares thematic reports, which address the way in which the OAS states deal with a given subject, for example, the manner in which they treat the rights of women.

Conduct On-Site Visits

The Commission conducts on-site visits, meaning visits to places where an evaluation of the human rights situation is considered necessary. Over the course of its more than four decades of work, the Commission has visited most of the OAS states. These visits are of great importance, in that they allow the Commission to acquire firsthand information on the human rights situation, enter into direct contact with civil society, interact with public officials and express to them any objections there may be to their policies and conduct, and in general, provide visibility to the Commission, placing the issue of human rights in a more prominent place on the agenda and in public debate. The Commission therefore usually keeps the press informed of its visit and holds a press conference upon its conclusion.

Develop Specialized Work in certain Thematic Areas, through Rapporteurs and Other Mechanisms

In some areas that the Commission considers particularly relevant, it has established rapporteurs or other bodies that deal with them specifically. A rapporteur is someone who is appointed, in their individual capacity, by a committee to investigate specific human rights issues and prepare reports on those issues. For example, there are currently rapporteurs on freedom of expression, the rights of women, prison conditions, indigenous peoples, children and migrant workers. There is also a unit dedicated to the protection of defenders of human rights, taking into account the risks they often face in their work.

To Hear and Resolve Complaints in Specific Cases

Any individual or organization may present complaints to the Commission for the violation of the human rights of one or more persons. The Commission studies these complaints, receives the evidence, issues determinations with respect to the complaints, conducts follow-up to its determinations to verify that the states comply with them, and sends cases to the Court.

The Commission may also adopt urgent precautionary measures in cases warranting them due to the seriousness of the situation, so as to protect the life or other rights of individuals. In addition, it can request that the Court order provisional measures for the same purpose.

Other Functions

The Commission carries out several additional functions. One of them is the work of promoting human rights, in other words, disseminating the importance of the protection of these rights and the role that the

Inter-American system plays in this regard. Other relevant work is the participation of the Commission in the preparation of treaties and declarations. More recently, the Commission has been developing an advisory function.

The Commission carries out all of these duties employing specifically the parameters established in the American Convention on Human Rights, the American Declaration of the Rights and Duties of Man and other international human rights instruments.

The victims, their relatives, their attorneys, and civil society organizations in general may participate in different ways in order for the Commission to carry out these functions effectively. Indeed, the participation of civil society is often crucial.

The functions of the Commission and their practical use, as well as the impact of civil society, will be reviewed in greater detail in Chapter II of this Guide.

The Evolution of the Commission: From Dictatorial Governments to Civil Governme nts

The Commission was originally established in a context in which there were numerous dictatorships in the Americas. In its first years of activity, the Commission concentrated its work on the preparation of reports on the situation of human rights in countries under dictatorial regimes. Later, beginning in the mid-1960s, it also began to receive and resolve complaints in specific cases. These complaints dealt mostly with massive and systematic violations of the right to life, the right to mental and physical safety (cases of torture and other mistreatment) and other basic rights. However, the bulk of its work continued to focus on the preparation of reports, since a more general picture of such violations, their causes and the ways to overcome them could be presented through them.

Beginning in the mid-1980s, and especially since the 1990s, with a clear predominance of civil governments in the OAS, the examination of specific complaints came to be the Commission's main work. Notwithstanding the fact that to date the majority of these complaints continue to deal with violations of the right to life and personal safety, they began to be more diverse from a thematic point of view, with a great number of cases beginning to come to the Commission due to problems of discrimination, due process, freedom of expression and other matters.

1.5 The Inter-American Court of Human Rights

The Inter-American Court of Human Rights was created by the American Convention and began operating in 1979. The structure, jurisdiction and functions of the Court are described in the Convention itself and in the Statute and Rules of the Court.

The Court is based in San Jose, Costa Rica. It is composed of seven judges, elected by the states of the Organization. The judges are elected for a period of six years and may be reelected a single time. There may not be more than one judge of the same nationality serving on the Court at the same time. Given that they are judges, they are elected in their capacity as individuals and not as representatives of the states of which they are citizens.

The Inter-American Court of Human Rights has two main functions:

Contentious Function

Through this function the Court hears complaints in specific cases. These complaints may be sent to the Court by the Commission or by states, but not directly by individuals or civil society organizations. The Court receives evidence and decides the cases, determining indemnifications or other forms of compensation, ordering states to reform their laws, or adopting other measures. The Court subsequently conducts follow-up of its decisions to ensure that they are complied with, and the case is closed only when the judgment has been wholly satisfied. *Only those States that have recognized expressly the contentious jurisdiction of the Court are subject to it.*²⁴

The Court may in addition, as previously mentioned, adopt urgent provisional measures to protect the basic rights of individuals in urgent cases.

Although, as indicated, individuals may not file a case directly to the Court, they are able to participate throughout its processing in order to ensure the appropriate defense of their rights.

Advisory Function

Through this function the Court issues decisions on legal problems relevant to human rights issues in the Americas. For this purpose the Court bases itself on the treaties and declarations of the Inter-American system and on the international instruments of other international systems for the protection of such rights. In the exercise of its advisory function, the Court may also issue decisions on the interpretation of specific norms of Inter-American instruments. The Court exercises this function with respect to all of the Member States of the OAS upon request.

The Evolution of the Inter-American Court

During the first decade of its work after its establishment in 1979, the Court focused almost exclusively on rendering Advisory Opinions, establishing some important foundations for the jurisprudence of the Inter-American system. At the end of the 1980s, the Commission began to send contentious cases to the Court more regularly, although they still represented a small percentage of the total cases decided by the Commission. This changed with the adoption of the new regulations of the Court and the Commission in 2001, and the volume of contentious cases before the Court increased significantly. In spite of the fact that the states also have the power to send cases to the Court, this has only occurred on one occasion when, in 1992, Peru sent the case of Lori Berenson at the same time the Commission did.

1.6 The General Assembly and the Permanent Council of the OAS

The General Assembly is composed of the Member States of the Organization, and the Ministers of Foreign Affairs usually head the representation of the respective states. In some cases, rather infrequently, some state delegations are headed by the President of the Republic or another official who exercises the position of Head of State or of Government.

Since over a decade ago, the OAS has held a regular session of the General Assembly each year and, when it considers it necessary, it also holds extraordinary sessions. The regular General Assembly is itinerant and is usually held over three days beginning on the first Monday of the month of June of each year. The extraordinary General Assembly sessions are generally held in Washington, D.C., although not always.

The Permanent Council of the OAS is the political body of the Organization that functions regularly and has its seat in Washington, D.C. It is composed of the Member States of the OAS, represented by their respective ambassadors.

Together with the Secretary General of the Organization, the Permanent Council carries out the daily work of the Organization, in political, diplomatic, economic, commercial matters, and so on. Human rights are also among such matters. Individuals and some civil society institutions are often not aware of this. Although throughout the history of the OAS the work of the Permanent Council has had positive as well as negative consequences as to the protection of human rights in the Americas, what is certain is that its influence is relevant to those rights; as such, it is important to know about the role of this body.

The Permanent Council is composed of several committees in which civil society organizations may also participate, the most relevant of them in terms of human rights being the Committee on Juridical and Political Affairs (CJPA).

In the next section we outline the functions of the General Assembly and the Permanent Council given that their roles are complementary.

Preparation of Human Rights Treaties and Declarations

In order to begin the preparation of a treaty or a declaration in the OAS, the General Assembly must decide in favor of such action. On occasion, it is possible that the Commission or a NGO conceives initially of the idea of preparing a treaty or declaration on human rights, but in order for its preparation to be made official, the General Assembly must adopt a decision in that regard.

Once such decision has been made, the General Assembly charges the Permanent Council with the task of beginning the preparation. Usually the Permanent Council will form a Working Group within the Committee on Juridical and Political Affairs in order for it to formulate the articles of the draft international instrument. This Working Group will be made up of representatives from those states that wish to join it. The possibility of civil society having an impact on the work carried out by the Working Group depends in part upon the willingness of the states, but also in significant part on the lobbying efforts made by the NGOs themselves. *In this sense, it is important for the NGOs to motivate the states with policies that are the most protective of human rights to participate in the respective Working Group. It is also relevant for civil society to maintain fluid and constant channels of dialogue with the states, through informal exchange as well as written and oral presentations before the Group. It may also be useful for civil society organizations to persuade the Working Group to invite specialists to make presentations on the subject in question.*

Normally the preparation of a treaty or of a declaration takes several years. During the course of this time, successive drafts are prepared and presented for the consideration of the Permanent Council and, occasionally, the General Assembly. Sometimes it may be important to promote the opening of a debate in the General Assembly regarding the status of a draft international instrument, since the points of view or priorities of the Ambassadors to the OAS are not always the same as those of their respective Ministries of Foreign Affairs, and momentum from the General Assembly can be decisive. Moreover, lobbying the Ministries of Foreign Affairs is important because they often send written presentations to the Working Group within the context of treaty preparation.

Once the Permanent Council considers that a draft is in its final phase, the Council itself will normally refine some aspects of the text. This stage can also be decisive, given that sometimes the Council may

introduce important last-minute changes. As such, follow-up on the part of civil society organizations should also extend to this stage. Given that, as of several years ago, the General Assembly sessions are brief (three days rather than the five that they lasted previously), it is now more likely for the text of the international instrument approved by the Permanent Council to be adopted without changes by the General Assembly. Therein also lies the importance of civil society's involvement before the Permanent Council.

A Case of the Active Participation of Civil Society in the Preparation of a Treaty: The Inter-American Convention on Forced Disappearance of Persons

The idea of preparing a Convention on disappearance had begun to be discussed in the OAS during the mid nineteen-eighties. It also produced an effect in the UN, where work was begun on the preparation of a solemn declaration on the subject. In the UN²⁵, concern about disappearance had arisen from its systematic practice in Latin America, but later it had spread to other continents, particularly Asia. In the OAS, the Commission had prepared at the end of the eighties a preliminary version of the Convention, which encompassed the most important jurisprudential developments. Nevertheless, even though a Working Group had been established in the OAS for its study, in practice several years passed without the states pursuing the issue effectively.

In January of 1992, however, the UN adopted the declaration that had been in preparation. This resulted in the paradox of the UN completing its task first, even though it had initiated its work on the issue based on the initial momentum that had arisen within the Inter-American system. Clearly, it was a declaration and not a convention as in the case of the OAS, where the process of adoption was therefore more complex; but measured in terms of the amount of work dedicated to it in one system and in the other, it was evident that the UN had made a much greater effort.

(continues on the next page)

The adoption by the UN of the Declaration on the Protection of All Persons from Enforced Disappearance then caused the matter to be expedited in the OAS. This greater streamlining, however, was not accompanied by a criterion protective of human rights. The Working Group, composed of Member States of the OAS, formulated a new version of the Convention, whose norms signified an absolute retrogression with respect to the status of the system on the subject of disappearance. Moving completely away from the draft prepared by the Commission, from the jurisprudence of the Court in Velásquez Rodríguez and other cases, and from several resolutions of the General Assembly, the new draft eliminated all reference to forced disappearance as a crime against humanity, accepted the invocation of superior orders as grounds for justification, considered legitimate the issuance of amnesty rules on the subject, and allowed political asylum for its perpetrators, among other provisions.

This draft, still unfinished, came before the General Assembly held in May of 1992. The Assembly had to decide what steps to take. The small group of NGOs present, made up of FEDEFAM²⁶ (Latin American Federation of Relatives of Disappeared Detainees), Global Rights²⁷ (then known as the International Human Rights Law Group), Amnesty International²⁸ and the International Commission of Jurists²⁹, succeeded in having the resolution that was approved there include the requirement that the civil society entities be heard during the following stage of proceedings on the draft convention. This was preceded by an intense debate, with states that supported and states that rejected such participation. Finally a consensus solution was reached whereby the Working Group would have to “listen to” the civil society organizations.

During the subsequent two years, the NGOs formed a broad coalition and worked actively to strengthen the Convention, so as to ensure that it encompass international developments on the subject. Argentina, Canada, Chile and the United States played a relevant role in this direction. As for the Commission, the states continued to keep it in a secondary role, in spite of its expertise in the area.

Ultimately a text was adopted that was generally satisfactory in terms of the standards, with changes having been made to the regulation of the four previously mentioned points, which had been the object of severe criticism. Most importantly, the Convention consolidated, in an instrument at the treaty level, a set of standards that until then had been developing within the Inter-American system, particularly by way of interpretation of the American Convention on Human Rights. Nevertheless, another element that is supposed to be present in a treaty of this nature, which is the creation of specific mechanisms intended to make protection more efficient, received scant regulation. In its original draft, the Commission had created some specific mechanisms for urgently confronting situations of disappearances. These were virtually eliminated in their entirety in the final text, and therefore it is necessary to continue using the mechanisms established in the American Convention on Human Rights.

Regardless, the overall experience was positive, in that the Convention was strengthened significantly, and also in that an initiative was developed for the joint action of a broad coalition of NGOs, which would later emerge as systematic work before the political bodies of the OAS.

(1.6 The General Assembly and the Permanent Council of the OAS, continued)

The Assignment, Receipt, Discussion and Approval of Reports on Human Rights and the Adoption of Resolutions on the Issue

The General Assembly and the Permanent Council of the OAS are the bodies that order the preparation of reports in the area of human rights. They are also the ones to receive such reports, submitting them to debate and to their possible adoption.

The political bodies of the OAS assign numerous reports that are related directly or indirectly to the topic of human rights. In addition, the Commission and the Court (the latter by mandate of the American Convention) must present Annual Reports on their activities.

These reports are first submitted for the consideration of the Permanent Council. The President of the Commission and the President of the Court give oral presentations and then the states express their points of view. At times, these debates reach intense levels, with some states that question the work of the aforementioned human rights bodies-- generally in reaction to criticism of their record of human rights protection-- and other states that support those bodies. These debates tend to reflect different views of the states regarding the role that human rights play, as well as the role of the Inter-American bodies in the matter.

In contrast, due to the abbreviated format of the General Assembly, currently those sessions do not usually involve significant debates regarding these reports, with many states repeating what they maintained in the Permanent Council.

Although the Permanent Council and the General Assembly never formally reject the reports of the Commission or the Court due to diplomatic practices, it is important to take into account that those political bodies do issue resolutions with respect to the reports presented and that the content of such resolutions may influence the agenda of the human rights bodies. As such, it is important that civil society become actively involved in lobbying work related to these resolutions. It is appropriate to do this before the Permanent Council as well as the General Assembly, since some aspects of the resolutions are often modified by the Assembly.

In addition, the Permanent Council and the General Assembly hear and decide upon many other resolutions that have an impact on human rights. They may be in reference to more diverse matters such as judicial system and human rights, terrorism and human rights, the

strengthening of the Inter-American system, the participation of civil society in this area, the protection of human rights defenders, and so on. In most cases, once these resolutions are approved by Permanent Council they are adopted by the General Assembly without further debate. Nevertheless, in more than a few cases the Assembly makes changes to them – sometimes important ones – and civil society has played a central role in this through its efforts lobbying and persuading some states.

The Political Bodies and the Inter-American Commission

During the 1960s, 70s and 80s, in spite of the fact that many of the governments represented in the political bodies were dictatorial, these bodies usually took charge of the substantive aspects of the Commission's reports and debated the human rights situations of the respective states based on those reports. Moreover, it was common for the General Assembly to issue a resolution making specific reference to the country that was the subject of the report. Although the accused governments sometimes impeded the Commission's visits and put forward strong defenses, the political bodies did not avoid debate, and the support of these bodies for the Commission prevailed ultimately. During this period the Inter-American system presented two very marked groups: on one hand, those states with unequivocally dictatorial governments that violated human rights massively and systematically; and on the other hand, those others that were not in that situation, and that were in a comparatively better situation, by virtue of having civil governments and not engaging massively in violations of the right to life.

On shifting to a context in which civil governments predominated, it was thought that there would be significant support for the work of the Commission. However, it has not been so. Although there are states that support the Commission's work, most of the states play a passive role most of the time and react vehemently when they feel that they are questioned by such bodies. This has also allowed room for the prominence of the most belligerent states. *All of this makes the participation of civil society in the Permanent Council and the General Assembly especially important.*

Exclusive Powers of the General Assembly

In addition to having the previously discussed complementary functions with respect to the Permanent Council, the General Assembly has certain exclusive powers with regard to human rights. The main ones are as follows:

Elect the Judges of the Court and Members of the Commission

The General Assembly elects the judges and the commissioners from among the candidates that have been proposed by the states. The states also vote in the General Assembly, as occurs in all intergovernmental organizations (the UN, the Organization of African Unity, the Council of Europe, and so on).

Consequently, civil society is not able to participate directly in the proposal of candidates or in their election. ***However, civil society may exert influence through lobbying.*** This influence occurs at several stages:

- Persuading some states to present candidates who are specialists on human rights (a requirement provided for in the American Convention which is not always complied with) and promoting their candidacies among other states. It should be noted that this task is carried out primarily in the respective Ministries of Foreign Affairs and not in the Permanent Council, since it is usually the Ministries themselves that adopt the decisions with respect to the matter. The press can also be used for this purpose. ***In any case, NGOs should evaluate case by case not only the advantages but also the disadvantages that the support expressed by an NGO can represent for a candidate;***
- Making states see the impropriety of electing candidates that have a negative history with regard to human rights, such as, for example, having exercised governmental functions in a dictatorial regime. This lobbying may be conducted through the Ministries of Foreign Affairs as well as during the General Assembly itself and, in general, by means of calling the public's attention to the issue;
- In general, promoting the necessity of carrying out an informed and transparent process, with a broad debate, with regard to the technical qualifications of the candidates and their experience in the field.

Conduct Follow-up to the Judgments of the Court

The General Assembly of the OAS has an express mandate emanating from Article 65 of the American Convention to monitor the judgments of the Court, so as to ensure the effective compliance of the states whose liability has been established in the decisions. The Court must inform the Assembly of those cases in which states have not abided by its decisions in order for the Assembly to adopt the appropriate measures. This role of the Assembly derives from the system's characteristic of collective guarantees of the states.

Nevertheless, in practice, the General Assembly limits itself to complying with the formality of this function without conducting

follow-up that is truly effective. *It is therefore indispensable that civil society organizations play an active role in this respect.*

Determine the Budgets of the Human Rights Bodies

The General Assembly plays an important part in the establishment of the financial budgets of the Commission and the Court, although it is the Secretary General of the OAS who assigns the amounts specifically. This is a power that has acquired growing significance in recent years, since the increase in the volume of cases in the Court has given rise to new funding needs.

1.7 In what ways can civil society participate in the OAS?

Civil society organizations have always participated actively in the development of the work of the Commission and the Court. With respect to the Commission, they have played a crucial role in supporting its tasks by reporting violations, providing information relevant to the preparation of country reports, summoning victims to give statements before Commission during its on-site visits, and so on. The participation of NGOs has also been very relevant in the processing of cases before the Court, in contentious cases – whether as advisors to the Commission or, more recently, acting autonomously in the representation of victims- as well as in Advisory Opinions.

As seen previously, the Permanent Council and the General Assembly of the OAS likewise have an impact with regard to human rights. Nevertheless, civil society has not paid the same attention to these organizations throughout the history of the OAS. This began to change during the 1990s, when civil society began to increase its presence before the political bodies. As the Permanent Council and the General Assembly were accustomed to a manner of working in which they were not monitored, let alone had the direct participation of NGOs, the process of opening it to greater participation was not easy. However, it was due precisely to the initiative of a coalition of NGOs, which was able to garner the support of governments favorable to the idea, that the forms of participation of civil society before the political bodies of the OAS were expanded.

A Brief History of the Efforts of Civil Society to Achieve Greater Participation in the OAS

The few NGOs that attended the General Assembly of the OAS until some years ago did so through a "gracious concession", since it was at the complete discretion of the OAS to invite them or not. This, added to the fact that NGOs were not able to make presentations before the Assembly, gave rise to a vicious circle, such organizations saw no point in earmarking resources for attending these meetings. In spite of this, the participation of NGOs in the General Assembly increased progressively during the nineties due to the fact that, in spite of the limitations, some successes were attained in lobbying at the assemblies. Thus the vicious circle was broken and, beginning in 1997, the presence of civil society increased significantly, with the attendance of several dozen entities at the General Assembly and with a joint declaration signed by several hundred others.

As for the Permanent Council, the informal and irregular attendance of NGOs was allowed beginning in the mid-nineties. However, the NGOs were not convened or notified of the agenda, and were made aware of upcoming meetings only thanks to the goodwill of some state representatives. On other occasions, and without there being any predefined criteria for it, they were simply excluded from certain meetings. Formally, they were not authorized to circulate documents or participate orally.

Due to these deficiencies and to the impetus provided by the NGOs themselves and some states, the Permanent Council established in 1994 a Working Group on the situation of the NGOs, intended to advance toward the creation of a mechanism for consultative status that would recognize and institutionalize their right to participate in OAS matters. However, at an initial stage, this group concluded its task without recommending the establishment of consultative status or anything similar. While the Working Group was active, some NGOs prepared a draft containing a set of regulations on consultative status; this document was distributed to different governmental delegations, but none of them ever submitted it to the Working Group, having considered that there would not be any collective inclination toward working on it.

When it seemed that the process toward the establishment of consultative status had stalled definitively, the issue regained unexpected strength as a consequence of the guidelines of the Second Summit of the Americas, held in Santiago, Chile in April 1998, which emphasized the need for strengthening forms of civil society participation. This led to the adoption of a resolution that year in the General Assembly of the OAS calling for this participation to be made effective in the OAS. A joint Working Group of the Permanent Council and the CIDI (Inter-American Council for Integral Development) on the strengthening and modernization of the OAS then assumed the task of progressing along the lines of opening new channels for the participation of civil society. In parallel, the NGOs established a permanent organization in order to conduct constant monitoring and make contributions to the Working Group.

Next, the Working Group prepared a draft containing a set of detailed guidelines establishing a mechanism of consultative status. The General Assembly of 1999 authorized the work in this direction, adopting a resolution on the OAS and civil society that included an appendix containing the aforementioned guidelines. The resolution of the Assembly created a committee within the Permanent Council in charge of following up on the guidelines and completing them before the end of 1999.

The coalition of NGOs continued its monitoring work during this stage and sent a set of observations on the draft guidelines to the aforementioned committee. This process effectively concluded in December 1999, establishing a system of consultative status for civil society entities in the OAS. This was realized through the committee's adoption of the document called "Guidelines for the participation of civil society organizations in OAS Activities"³⁰, and its adoption a few days later by the Permanent Council.

(1.7 In what ways can civil society participate in the OAS?, continued)

The System of Consultative Status of NGOs Before the OAS

The establishment of a system of consultative status for civil society organizations may become, if properly implemented, a significant step toward a more transparent and efficient OAS. The established system still has deficiencies, and although over the course of its creation process the NGOs formulated a series of proposals that were included, there remain some limitations to their participation that do not seem consistent with the general purpose of strengthening the participation of civil society. In some ways, there is still a certain "jealousy" on the part of some states regarding the fact that civil society organizations are able to assume a role that signifies a certain shift in prominence from the states party to the OAS to such organizations. Nevertheless, establishment of a mechanism of consultative status opens the doors to the development of different dynamics, which should lead to a broadening of the forms of NGO participation and of the interaction between NGOs and the organizations of the OAS.

The guidelines that establish the consultative status begin by indicating (paragraph 1) that their objective is to regulate the participation of civil society organizations in the OAS. Next, it is specified that civil society organization shall be understood as "any national or international institution, organization, or entity made up of natural or juridical persons of a nongovernmental nature. " (paragraph 2). Also included is a set of principles governing the participation of NGOs, among which it is highlighted that, "[t]he matters with which they are concerned must fall within the competence of the OAS, and the aims and purposes they pursue must be consistent with the spirit, aims, and principles established in the Charter of the OAS" (4(a)) and that their activities shall contribute to the development of the activities of the organizations of the OAS (4(b)).

The consultative status recognizes the right of registered NGOs to participate in the conferences of the OAS, but it is with respect to the Permanent Council and the CIDI that the most significant innovations are introduced. Thus it is established that "[r]egistered civil society organizations may designate representatives to attend, as observers, public meetings of the Permanent Council, CIDI, and their subsidiary bodies", this being extended to private meetings with the authorization of the President in consultation with the participating states (paragraph 13(a)). The NGOs must further be informed of the calendar of public meetings and of the respective orders of business (13(b)).

Also established is the right of NGOs to present written documents on matters under discussion, which shall be distributed by the General Secretariat to member states. When the document exceeds 2000 words, the NGO must bear the cost of its distribution (13(c)). This recognizes a previously non-existent right of civil society organizations: the right to circulate documents through official OAS channels.

Another step without precedent in the OAS is the fact that NGOs may make oral presentations before certain political bodies. They may be made at the meetings of the committees, groups of experts and working groups of the Permanent Council or the CIDI. In the case of the committees, only one presentation is authorized at the beginning of the debate, whereas in the other organizations a new presentation can be made upon concluding the consideration of each issue. In addition, only with respect to the meetings of the groups of experts and working groups – and not committee meetings- it is established that the NGOs shall receive the relevant documents prior to the meeting.

Nonetheless, in provisions applicable to all of the above cases, the guidelines emphasize that "[c]ivil society organizations may not participate in deliberations, negotiations, or decisions adopted by member states" (with identical language in 13 d and 13 e). These provisions are ambiguous, and they do not make clear whether they would possibly authorize the exclusion of NGOs at certain times during the discussions, which would be completely contradictory to the purposes that inspired the establishment of a system of consultative status. It is the job of civil society organizations to promote an interpretation of these provisions that allows for the broadest possible participation.

In order to make the consultative status mechanism as beneficial as possible, it will be essential for the NGOs of the hemisphere effectively to make use of the new channels available, taking the best advantage of them in order to strengthen the Inter-American system. *Furthermore, due to the ambiguity of some of the regulations on consultative status, the active role of civil society organizations is indispensable in order for those norms to be interpreted in the manner that most favors transparency and participation.*

Is it necessary to obtain consultative status in order to participate in the OAS?

First, it must be reiterated that when we talk about consultative status we are referring to the participation of civil society in relation to the political bodies of the OAS. The attainment of consultative status, or lack thereof, is not related, in contrast, to the proceedings of civil society entities before the Commission and the Court. Proceedings before these bodies are governed by the American Convention on Human Rights and by the respective regulations of the Commission and the Court, not by the system of consultative status, and will be reviewed later in this Guide.

Although obtaining consultative status is not essential in order for a NGO to participate before the political bodies (Permanent Council and General Assembly), it is highly recommended. When an NGO does not have consultative status its participation or non-participation depends upon the completely discretionary decision of the political bodies. In contrast, when the NGO does have such status, this participation corresponds to the exercise of a right of which, as such, the NGO may not be deprived based on discretion. Moreover, the acquisition of consultative status

How to Acquire Consultative Status Before the OAS

In order to acquire consultative status before the political bodies of the OAS, civil society organizations must submit their request to the Secretary General of the OAS at the following address:

Secretary General of the OAS
17 Street and Constitution Avenue, NW
Washington, DC 20006 USA

The request must contain the elements specified below:

- The official name, address, and date of establishment of the organization, as well as the names of its directors and legal representatives;
- The primary areas of the organization's activity and indication of its relationship to the activities of the OAS bodies in which it intends to participate;
- Reasons why the organization believes that the contributions it may make to OAS activities would be of interest to the OAS;
- Identification of the OAS work areas in which the organization proposes to support activities or to make recommendations on the best way to achieve OAS objectives.

The following documents should also be attached to the request:

- The Organization's Charter
- Bylaws
- Most recent Annual Report
- Institutional Mission Statement
- Financial Statements for the year prior to the request. It should include public and private sources of financing, referring in particular to government sources of funding.

There is a Committee on the Participation of Civil Society in OAS Activities that is responsible for processing the requests. The Committee examines the requests and may require additional information. The Committee transmits the requests to the Permanent Council of the OAS, which adopts the decision with respect to the request.

will allow the NGO to stay better informed as to the tasks of the OAS, placing it in better conditions so as to make its participation more effective.

A 2003 resolution of the Permanent Council strengthened the participation of civil society organizations, especially of those registered under the system of consultative status. The document, entitled “Strategies for Increasing and Strengthening Participation by Civil Society Organizations in OAS Activities”³¹, charges several organizations of that institution with implementing a series of practical measures on the subject, so as to increase NGO access to information on the OAS, to create regular instances for debate in the OAS with the participation of those institutions and to establish suitable mechanisms for dissemination on these matters. The resolution also urged the member states of the OAS to adopt certain measures with the same objectives.

1.8 Some Practical Aspects of Lobbying Before the Permanent Council and the General Assembly

As previously indicated, it is best to conduct ongoing lobbying efforts in order to provide for the adequate follow-up on issues dealt with by the Permanent Council. However, for NGOs that do not have headquarters of representatives in the city where Permanent Council operates, this can be difficult. Thus, it is advisable on one hand for these NGOs to establish contacts with their counterparts that do have their main offices in Washington, D.C., and on the other, to be aware of the key times during each year for participating directly before the Permanent Council. It is also important to know how to prepare and carry out participation before the General Assembly.

Since the General Assembly of the OAS is held in early June, this is the departure point of each annual work cycle. The Assembly issues a large number of resolutions to be implemented by the Permanent Council and its subsidiary bodies over the course of the year, and they must usually give an account at the next General Assembly of work performed.

The times of greatest NGO activity before the Permanent Council and its Committee on Juridical and Political Affairs coincides with the periodic sessions of the Commission, which is when the largest number of NGOs from all over the Americas convene in Washington. The first of these session periods normally takes place in late February and early March of each year. The second is generally held in late September and early October.

The NGOs take advantage of these periods to agree on strategies and to make oral presentations to the Permanent Council of the OAS and its subsidiary organizations. These are usually accompanied by written presentations. The presentations may be complemented by others that are prepared over the course of the year. In addition, on the occasion of these visits, the NGOs usually hold meetings with embassies of OAS states.

In the sessions held from late February to early March, the NGOs follow up on these tasks.

It would be ideal for the greatest possible number of NGOs to participate in the Permanent Council sessions on human rights issues. Nonetheless, since this is often not possible due to the scarcity of resources, it may be possible to channel presentations in writing and establish means of coordinating with NGOs that will attend the sessions.

Further, a complementary means of lobbying is to lobby the Ministries of Foreign Affairs themselves, so as to influence the instructions that they send to their Missions to the OAS.

However, it is important to consider that if the decision regarding a resolution is crucial to an NGO (for example, if it relates to the respective country), it is appropriate to make the greatest effort to participate in the respective sessions before the Permanent Council and not wait until the General Assembly, since in most cases now the resolutions agreed to in the Permanent Council are adopted without changes in the General Assembly, since it does not have sufficient time to reopen a substantial debate on the issue.

In order to participate in the General Assembly the NGO must send a letter to the Secretary General of OAS at least 60 days in advance (see a sample letter in the Appendices). If the NGO has consultative status its participation will be assured; if it does not have such status, it is — strictly speaking — within the discretion of the Secretary General whether or not to extend an invitation, although in practice it is most likely that there will not be a problem with participating. It is not necessary for an NGO to work in several countries in order to participate in the Assembly. That is to say, the situation is different from that of the bodies of the UN such as its Commission of Human Rights, where it is indeed necessary to conduct work at the international level (or attend under the auspices of an international NGO) in order to participate.

In order to prepare adequately for a General Assembly session it must be understood as a continuation of the work carried out before the Permanent Council. As previously indicated, the General Assembly is the place where each annual cycle is opened and closed, and where the work that the Permanent Council has been carrying out over the course of that period is culminated. This does not mean that it is pointless for an NGO that has not been able to attend sessions of the Permanent Council or interact in another way with the Council to participate in the General Assembly, but it should be considered that its possibility for impact in such a case would be greatly diminished.

There is an international coalition of human rights NGOs that conducts activities before the Inter-American system, which in addition to monitoring the activity of the Permanent Council readies a series of initiatives in preparation for the General Assembly. One of these initiatives is a joint declaration, which includes the NGOs that will participate in the Assembly as well as others that, although they are not able to participate, are interested in having their point of view heard.

Immediately prior to the General Assembly, the NGOs usually hold a seminar or other meeting to debate the most relevant issues concerning human rights that will be dealt with in the Assembly. State delegates are also invited to participate in this seminar so as to sensitize them to the key concerns of the civil society entities.

The NGOs also hold a press conference in which they make known their proposals to the General Assembly. The Assembly sets up a pressroom in which it is possible to maintain fluid contact during the sessions. Due to its international nature, the Assembly is covered not only by the communications media of the headquarter country, but also by those of other countries as well as international news agencies. Thus, at least potentially, it is possible for civil society to achieve greater dissemination of its ideas.

Furthermore, ever since the system of consultative status was established, a forum convened by the OAS has also been held immediately prior to the Assembly. Civil society, the states and officials of the OAS, including the Secretary General, participate in this forum. This is another instance in which to make the points of view of the NGOs known to the states and the OAS.

In contrast, during the Assembly itself, the opportunities for NGOs to give oral presentations are very few. Although their forms of oral participation in other instances before the OAS were broadened with the establishment of consultative status for NGOs, the same did not occur with respect to the General Assembly, since it is now of a shorter duration than it had been previously. Indeed, not even the Observer States of the OAS (that is, states from other regions of the world that do not belong to the OAS, but do attend the Assembly) currently have this right to make oral presentations, which they used to have. Nevertheless, a practical formula that has been used on some occasions is to obtain permission from some state for the NGOs to occupy part of its time, or to have a state read a document prepared by the NGOs. One example of the former occurred when Panama, host country of the General Assembly of the OAS in 1996, yielded part of its time to an NGO of visually disabled persons so it could express its observations to the Draft Inter-American Convention on the Elimination of All Forms of Discrimination Against Persons with Disabilities –adopted some years later. An example of the latter was when the Minister of Foreign Affairs of Costa Rica, the country in which the 2001 Assembly was held, read a document prepared by a group of NGOs.

Notwithstanding the above, the NGOs may make written presentations that are transmitted through the official channels of the OAS (that is, they become Assembly documents). ***However, the most important work that civil society organizations can perform during the Assembly itself (we have previously indicated the relevant initiatives that can be carried out immediately prior to it) is lobbying.*** In this sense, and in coordination, the NGOs hold meetings with the state delegations and OAS officials, to influence the decisions that may be adopted by the Assembly, as well as to design strategies for future work. Many informal contacts are also made, including some during the review and amendment process of draft resolutions.

Throughout the Assembly, the NGOs meet constantly in order to stay informed of the progress and obstacles in the lobbying work. The last day of the Assembly they hold a final meeting on the results and implications of the work completed.

As can be appreciated, it is important that the participation of civil society organizations in the OAS extends not only to the Commission and the Court, but also to the political bodies of the

OAS, considering the influence — at times decisive — that these political bodies wield in the OAS's work on human rights.

English-Speaking Caribbean Relations with the Inter-American System

From the beginning, relationships between English-speaking Caribbean countries and the Inter-American system have not been very good. In the mid 1960s, when these countries became independent, a debate took place as to whether or not they should join the Organization of American States, an institution that has been perceived in English-speaking Caribbean countries as a place for Latin Americans to “speak up.”

Geographic aspects, as well as the possibility of getting OAS support, particularly from the Inter-American Development Bank (IDB), prevailed over cultural and political fears; still, some countries took years to join OAS —Trinidad & Tobago took five years and Jamaica seven years after their respective independence.³²

Language was, and continues to be, an aspect hindering relationships between the English-speaking Caribbean and Latin American countries. In addition, English-speaking Caribbean political systems have been perceived as being more stable than their Latin American counterparts making work in the region less of a priority.

But perhaps the element that had been most influential in the Caribbean's attitude toward the Inter-American system is Article 8 of the Organization of American States' Charter, then in force, which deliberately excluded Guyana and Belize from the OAS, due to territorial disputes —Venezuela's claim over a fifth of Guyana, and Guatemala's claim over Belize— that were taking place.³³ It must be taken into account that it was Grenada's 1978 ratification which allowed the American Convention to enter into force. On the other hand, Trinidad & Tobago, the only English-speaking Caribbean country that recognizes Inter-American Court jurisdiction, became the first country in denouncing a human rights treaty in 1998.³⁴

Trinidad & Tobago's denouncement made waves in the region, with the result that Jamaica threatened to follow suit. On top of it, the failure to get the other four English-speaking Caribbean states to accept the Court's contentious jurisdiction, and refusal by all the other Caribbean countries to ratify the American Convention, with the exception of Barbados, makes using the Inter-American system in the Caribbean a challenge.

Undoubtedly, the part of the discord between English-speaking Caribbean countries and the Inter-American system has been the death penalty, found in all English-speaking country law books and one of the major reasons for their failure to ratify the American Convention.

It is important that NGO involvement should endeavor to include and motivate participation of English-speaking Caribbean human rights NGOs. There are important organizations in Belize, Barbados, Jamaica, and Saint Vincent & the Grenadines, which could be invited to participate in OAS Assemblies and other activities, and/or to encourage domestic activities in these countries to promote the Inter-American system.

II. FUNCTIONS OF THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

This chapter presents the different functions of the Commission which include the following:

- Prepare Country Reports
- Conduct On-Site Visits (to the country where the events occur);
- Develop Specialized Work in Certain Thematic Areas Through Rapporteurs and Other Mechanisms;
- Carry out Advocacy Work and Other Initiatives;
- Hear and Decide Specific Cases.

2.1 Country Reports

The Commission prepares and publishes Country Reports in two ways. The first, through a report dealing exclusively with one country, may be very extensive (over 100 pages) and is usually preceded by a visit to the respective state, unless that state does not authorize the Commission to enter. The second way consists of a briefer report, usually around 10 or 20 pages that is included in the Commission's 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.

It is important to note that the members of the Commission allocate among themselves the different countries that are part of the OAS. Therefore, to ensure efficiency in NGO work, it is appropriate to identify the Commissioner in charge of a particular country³⁵. Likewise, the Commission's staff has one or more individuals assigned to specific countries, so it is desirable to identify them as well.

During the first decades of the Commission's activity, the Country Reports were concentrated almost exclusively on violations of civil and political rights (for example, the right to life, the right to not be tortured, the right to not be arbitrarily detained, and so on) that were committed on a large scale by the dictatorial regimes. Subsequently, the practice of referring also to economic, social and cultural rights (ESCR) in these Country Reports has become established. The reports have also come to include a gender-based perspective in analyzing violations, as well as references to other vulnerable groups such as indigenous peoples, African-descendent populations or others that exist in a particular state.

The preparation and publication of Country Reports was practically the only work done by the Commission during its early years of operation. In those first years, the Commission prepared reports on Cuba, Guatemala, Haiti and the Dominican Republic.

Even when the processing of individual cases was established in the mid 1970s, the Commission's principal task continued to be the preparation of such reports. This was the situation until around 1990. There were two basic reasons for this. First, many of the states against which individual complaints were filed did not participate in the processing of the case, meaning that they neither answered the complaint nor transmitted any reply to the Commission's requirements in the matter, or they answered only in summary fashion, without addressing the merits of the allegations much less presenting evidence in their defense. Second, and given the fact that the Commission was mainly confronting massive and systematic violations, meaning violations that stemmed from a deliberate plan in certain states, the resolution of individual cases, whether or not the state participated in the procedure, was notoriously insufficient. If it was a question of confronting hundreds and even thousands of violations committed by a single state within a short period of time, it was impossible for decisions on specific cases to be effective, given the processing that they required. Except for in certain paradigmatic cases, it was more appropriate to denounce the general human rights situation through Country Reports.

The impact of these reports was (and continues to be) favored additionally because in preparing them the Commission had from the beginning made use of the on-site visits, meaning visits to the place where the alleged violations had occurred. This mechanism, which will be reviewed later on in this chapter, has proved to be crucial in elevating the Commission's profile, given that it is precisely during such visits that it obtains the greatest press coverage, and by the same token, it is at this time that it particularly attracts the attention of state officials, of the victims, and of other people and institutions interested in human rights conditions. Indeed, the Commission virtually always receives new complaints during these visits. Even in the cases in which the Commission is not given permission to visit a country, the mere fact of this lack of permission tends to raise public interest and places state officials in the position of having to offer explanations for their refusal.

As a result of the processes of transition to democracy in nearly all of the OAS states, the preparation and publication of Country Reports by the Commission was reconsidered. Some states began to assert that the Inter-American system in general and the Commission in particular had been created within a context in which the human rights situation in the hemisphere differed substantially from that of the 1990s. The old context was one predominated by dictatorships that committed massive and systematic violations of human rights, while that of the nineties was characterized by the presence of democratically elected governments that would supposedly — as a general rule — themselves be concerned about the protection of such rights. This group of States affirmed that these differences of context made evident the inadequacy of the system's functions and forms of operating — especially those of the Commission — with regard to current needs. Continuing their argument, they proposed then that the Commission should concentrate its efforts on the promotion of human rights, that is, on disseminating knowledge regarding such rights and on conducting educational activities on the subject. Consequently, turning over the role of protecting

human rights to the state, and making it necessary to reduce the role of the Commission or, as was sometimes alluded to, even eliminate it.

A key proposal in this sense was to put an end to the Commission's Country Reports. Those reports, according to the countries that advocated for their abandonment, had made sense during the period of dictatorships, but did not within the new context.

A secondary proposal consisted in terminating the Commission's power to decide which states merited reports, and leaving that determination to the political bodies of the OAS. This was an idea that the states subject to reports had been proposing ever since the Commission began this mode of working. But the fact is that if the situation in the Inter-American system is compared to that in the UN, where the countries considered to require a Special Rapporteur are selected by the states forming the Commission on Human Rights, it is evident that the mechanism created within the first system is far superior.

Within this context, the Commission made explicit five criteria — currently still in effect — for the determination of the countries that were deserving of Country Reports:

- In cases of 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;
- In cases of states where the free exercise of the rights enshrined in the American Convention or the American Declaration has 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;
- When there is reliable evidence that a state commits gross and massive violations of the human rights guaranteed in the American Convention, American Declaration and other applicable human rights instruments, with violations of rights that may not be suspended, such as extra judicial execution, torture and forced disappearance, being of special concern in these cases;
- In cases of states that are in a process of transition from any of the three abovementioned situations;
- 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 of the report, dealing with the observations of the state according to its judgment.

The preparation of Country Reports by the Commission continues to make complete sense in certain situations. As such, this role has been reaffirmed by the Commission itself. The reports fulfill 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, verify progress or setbacks, monitor certain rights or make suggestions to state authorities (who on occasion request these reports themselves).

Using the Country Reports of the IACHR and the UN in Conjunction

The Country Reports of the Commission and those prepared by the UN are complementary to each other, and it is generally suitable for civil society to attempt both routes. When the gravity of the human rights situation warrants it, the preparation and dissemination of reports on the country should be sought from the Commission as well as one or more UN bodies.

In this sense, NGOs must make lobbying efforts to show the Commission that the conditions fall within one of the five previously discussed criteria for the preparation of a country report. They should carry out similar initiatives for the designation of a Special Rapporteur or, secondarily, for the preparation of reports to be assigned to other bodies of the United Nations.

This will increase the vigilance of the international community with regard to that country and raise consciousness within the local population regarding the gravity of the situation, enhancing the possibilities of a change in behavior on the part of state authorities.

Duplication is not a problem when reports are prepared in parallel fashion by international bodies. Quite to the contrary, the parallel initiatives strengthen the work. In fact, when the Commission as well as UN organizations prepare reports on the same country, those organizations coordinate with and inform each other, resulting in reports that are more complete and meticulous and have a greater impact.

2.2 On-Site Visits

Among the most important attributes of the Commission is the practice of on-site visits to countries. The visits consist of delegations of the Commission members and supporting attorneys who go to the different countries of the OAS, hold meetings with public officials and members of civil society, and travel to different places within the country, visiting detention centers, communications media, churches, the police and armed forces and in general any entity or person necessary to evaluate the situation in that country.

The visits may have different purposes. They may be intended to study the general human rights situation in the country that is visited. It is also possible for a country to be visited in order to verify the situation of a specific right or a particular circumstance, such as to

examine the situation of the indigenous peoples of a country or its prison conditions. The Commission may also conduct an on-site visit in order to obtain information relating to a petition filed before it. Additionally, the Commission has been invited on occasion by governments that wish to demonstrate human rights advances or promote reforms that are blocked by congress or antiquated judicial branches. The Commission made its first on-site visit in the Dominican Republic, in 1961. To date it has carried out more than 80 on-site visits.

The on-site observations fulfill extremely important objectives and functions that go much further than the verification of facts. *The mere fact of the Commission's presence in a country generates a debate on the human rights situation.* In nearly all of the Commission's visits, the newspapers, radio stations and television channels constantly broadcast the activities it performs, and public debate on the issue is reinforced. At the end of its visit, the Commission normally presents its first impressions at a press conference that obviously generates considerable attention among the media, the authorities and the public in general. All of this also allows a greater number of persons to know about and access the Inter-American system. A visit of the Commission also has the function of preventing future violations, given that on many occasions, by making known the human rights situation in country, it contributes to the national and international public being informed, demanding that rights be respected and exercising greater oversight with regard to government authorities. Finally, the visits also fulfill a role in education and the promotion of human rights. The Commission seeks to educate the authorities on their international obligations in relation to the situation it has found. It also educated the public in general, disseminating information on human rights and the role that the Commission can play in their defense. Finally, it educates the international community by revealing the human rights situation in the region's countries.

The Case of an On-Site Visit that Ended Forced Disappearance in Argentina

A paradigmatic case in this regard was the preparation of a report on the human rights situation in Argentina in 1979-1980. This report and the facts surrounding it had a significant impact not only in the OAS, but also at the level of the United Nations and on the very practice of forced disappearance in Argentina. The Commission traveled to this country for an on-site visit in 1979, in the midst of the military dictatorship. The visit lasted seventeen days, being one of the longest ever conducted by the Commission. Once the visit had begun, the Commission received information that several dozen individuals were detained clandestinely in an isolated section of a jail. The Commission even received information on the names of some of these persons. The members of the Commission requested a list of prisoners from the authorities, verifying that the clandestinely detained individuals were not on it. Once at the jail, and after insisting on their wish to visit all of its outbuildings, began to hear shouts of "we're here! we're here!" In the face of the evidence, the prison authorities had to yield and allow the Commission to meet privately with the detainees who were held secretly and, according to all indications, were destined to disappear.

(continues on the next page)

This occurred within a context in which the Argentine government had constantly denied the secret detention of individuals as well as their responsibility for forced disappearances. Once the General Assembly of the OAS was informed of this background, there was an enormous commotion, with Argentina threatening to withdraw from the organization if a resolution were adopted against it. Ultimately, the Assembly adopted a resolution, which, in dealing with the problem of forced disappearance, did not mention Argentina expressly; but, in any case, the effect of the Commission's visit had already occurred.

Very little attention had been paid in the UN to complaints regarding human rights conditions under the Argentine dictatorship. But the firsthand evidence found by the Commission also transformed the situation in the UN, and the Working Group on Forced Disappearance³⁶ was created, initially dealing mainly with the conditions in Argentina.

Most important of all was that the intervention of the Commission saved many lives, both of the individuals they found and of many other potential victims, given that the massive practice of disappearance ceased almost immediately.

The Decision to Conduct an On-Site Visit

Permission of the government is always required for the Commission to be able to conduct a visit. The form in which that permission is obtained varies from case to case. A visit may be made at the invitation of the government itself, although it is almost always the Commission that requests the government's invitation. Many times governments extend the invitation with the intention of showing themselves as collaborators of the Commission, to present themselves as a government that is open to international oversight and that wishes to clear up doubts regarding the human rights situation. The government's invitation to the Commission may also be due to the pressure exerted by civil society in that regard.

Among the reasons that lead the Commission to decide to conduct an on-site visit to a country is the accumulation of complaints regarding violations of human rights, especially when a systematic picture of gross violations can be inferred from them. The Commission may also request permission to make an on-site visit for the purpose of examining the progress that has been made in the area of human rights since its last observations in the country.

In any scenario, the Commission will always need information from civil society to evaluate whether the visit is necessary. *As such, it is fundamental that civil society organizations periodically send the Commission information on the situation of human rights in the country, the degree of respect for them, the violations that exist, the attitude of the government, and so on.* There is no mechanism, format or particular date for sending this information. Basically, when reports on human rights are produced, it is always good to send them to the Commission. If an on-site visit

would be useful, it is a good idea to request hearings before the Commission in Washington to express civil society's interest in having the Commission conduct a visit.

Another relevant preliminary point is that the Commission's visit is preceded by the visit of the staff attorney in charge of the respective country³⁷. As such, it will be very important to maintain constant and fluid contact with that person, so as to have an influence on the coordination of the Commission's on-site visit.

The Activities of the Commission During a Visit

Over the course of its history, the Commission has created a practice in regard to the activities that it undertakes in the countries it visits. The duration of the visit depends upon the size of the country, the gravity of the situation and the agenda of work to be done. In general, the visits last between five and ten days. The Commission always meets with public officials from the different branches of government. Thus, it usually meets with the President of the Republic or whoever is the Chief of the Executive Branch, with members of congress and of the judicial branch. It also meets with ministers relevant to human rights, such as the Ministers of the Interior (Government), Defense, Justice, Foreign Affairs, and so on. In many cases, the Commission requests special meetings with other relevant individuals such as the Chief of Police, the Ombudsman, the Attorney General, the National Electoral Board, the organization in charge of Indian Affairs, and so on. It all will depend on the particular issues that concern the Commission.

Within the official sector, the Commission generally visits jails, military barracks, courts, and so on. On occasion it visits refugee camps. Generally, the Commission visits the capital and some regions of the country. It has visited indigenous communities on many occasions. The decision regarding places to visit also depends in large measure on the information it receives from civil society.

In addition, the Commission meets with different civil society entities such as NGOs, religious authorities, journalists and labor unions. It also meets with pro-government and opposition political parties, as well as with indigenous leaders or leaders of native communities.

All of the interviews that the Commission holds and the documentation it gathers are aimed at allowing the Commission to form a general opinion on what is happening in the country. The most important aspect of the Commission's practice, as previously indicated, is that it does not meet only with government officials. This gives it the ability to receive views, opinions and information from diverse sources rather than information covering only the official point of view. This greatly strengthens the impartiality of the conclusions arrived at by the Commission.

On the occasion of an on-site visit the Commission may, and in fact generally does, receive complaints of human rights violations in particular cases. This type of complaint may have two objectives. First, to present a complaint for the purpose of it

following the normal process established in the American Convention on Human Rights. In this case, it will have to satisfy the requirements set forth in the Convention in order for it to be processed. Another possibility is for these individual complaints to be used to exemplify the conditions being experienced in the country.

In order to perform its duties freely, the Commission requires a series of guarantees from the government. In particular, the government must grant the Commission all of the facilities necessary for performing its work. Among the most relevant aspects is for the government to authorize the Commission to go to where it wants to and conduct any interviews it considers relevant, with the promise that there will be no retaliation of any kind against the individuals or entities that cooperate with the Commission. The government's compliance with this obligation is fundamental to the success of the visit.

The Report of the Commission as the Consequence of a Visit

In most cases the Commission issues a report after making an on-site visit. Such report will not only give an account of the activities it conducted, but rather will mainly describe the situation it found, analyze it in light of the country's international obligations, and issue recommendations to the government to improve the human rights situation in the country. An idea of what the report will contain can be gleaned from the press release that the Commission issues at the end of its visit.

The Commission generally uses the following format in its reports to analyze the human rights situation of a country:

- It reviews the rights and guarantees set forth in the country's constitution.
- It examines the international obligations of the country in the field of human rights (conventions that have been ratified by the country).
- It explains the specific measures adopted by the government in order to guarantee respect for human rights in the country.
- It looks for common features in the complaints of human rights violations submitted by the NGO's and in the testimony of individual victims.
- Based on the Commission's observations during its visit, the report analyzes the factors that the Commission considers to have contributed to the human rights violations in the country.
- The report analyzes each one of the rights enshrined in the Convention that are alleged to have been violated in the general and individual complaints, and verifies compliance with each one of

them in the Member State, first outlining its legal norm, then describing the general observations of the Commission based on its visit, and lastly, presenting selected cases of violations of the right presented.

- Finally, the report includes a series of general conclusions and recommendations addressed to the government in order to put a stop to the violations that have been verified, or in order to improve the situation in areas requiring improvement.

These reports are very important and have had a very strong impact on different countries in the hemisphere. They have caused governments to change or abandon certain practices that violate human rights, have caused other countries to take an interest in what happens in a particular state, and have served to legitimize the claims that civil society had been asserting.

Civil Society and the Visits of the Commission

Civil society plays a fundamental role in the entire process of an on-site visit. In other words, the activities of NGOs are fundamental before, during and after the visit. *In many cases, the success or failure of a visit depends in large part on the suitable involvement of the NGOs. As such, the constant, coordinated and strategic work of civil society is crucial if it desires the Commission to visit the country and later produce a good report that has a relevant impact on the human rights situation in the country.*

The key point is that the Commission's visit be transformed into another tool in the work of NGOs to protect and promote human rights, to broaden the scope of their message and to find an ally in the Commission.

The first challenge that civil society faces is convincing the Commission of the need for a visit and, later, getting the government to invite the Commission or allow the visit to take place. For this, the information that is provided to the Commission is very important. It also helps to try to attend Commission sessions regularly before the visit, and to meet with Commission members or attorneys when the opportunity arises. Work with government officials in order for an invitation to be extended to the Commission should generally be directed through lobbying the Ministry of Foreign Affairs, which represents the government in its direct contact with the Commission.

If the Commission and the government agree on the need to conduct a visit and the appropriate permission is granted, the role of civil society prior to the visit continues to be fundamental. At this stage, civil society must assist the Commission, and in particular the person in charge of organizing the visit, to prepare the agenda. Thus, the civil society organizations must make suggestions regarding the main issues, the officials with whom meetings should be held, the places or regions that should be visited, and other aspects that are relevant in the specific context of the country.

Civil society is also crucial for making contacts with a broad spectrum of NGOs and facilitating meetings between them and the Commission.

At this preliminary stage, civil society still must be prepared. On one hand, it must educate the public in general as to what the visit signifies and its importance. On the other hand, it must prepare the information and documentation that it will hand over to the Commission. Finally, they must coordinate with all of the groups so as to take advantage of the Commission's presence in the country in the best way possible. Workshops, meetings, and press conferences are some of the activities that civil society often carries out as part of the preparation for the visit.

During the visit itself, civil society must maintain the most constant contact possible with the Commission, so as to act in accompaniment to the work that it is undertaking. This will allow the visit to be evaluated as it is unfolding, so as to be able to cover unforeseen aspects that arise along the way, facilitating the Commission's work and seeking to obtain the greatest benefit from its stay.

The Commission generally holds an extended meeting with the NGOs. This meeting may or may not be open to the public insofar as it is appropriate and safe— for example, in the context of a dictatorship it will usually not be safe due to the possible infiltration of individuals. In such meeting, the representatives of civil society presents the Commission with information and documentation, makes suggestions to the Commissioners, proposes issues to be raised with government officials, and so on.

In addition, the Commission holds other meetings with NGOs in particular, whether to deal with specific cases or to examine specific aspects of the country's human rights situation in more depth.

Moreover, while the Commission is in country, civil society should also take advantage of the opportunity to give its view on the human rights situation to the in general public. Since the Commission's presence attracts the interest of the communications media, the NGOs should seek to issue their message at that time.

On the last day of its visit, the Commission generally holds a press conference and issues a press release. Given that the Commission's report may take several months to prepare, this press conference is an important instrument in the NGOs' work of immediate follow up to the Commission's visit.

After the visit, the Commission engages in the preparation of a report. At this stage civil society must continue to provide it with information and respond to questions that the Commission may have in general.

Once the Commission has made the report public, civil society still has an important role. On one hand, the NGOs have a fundamental role in disseminating the report as broadly as possible, so as to extend its reach and impact to the maximum. This may

be in regard to the report generally or to specific aspects that it covers, such as the rights of women or of indigenous peoples. Summaries for the press can also be prepared in order to facilitate access to the report, which will usually be extensive.

The report is also a tool for the work of the NGOs with respect to the state. In particular, it is important to read and analyze the recommendations that the Commission makes for the improvement of the human rights situation. NGOs can develop plans to encourage the different government authorities to abide by those recommendations.

Finally, civil society must continue to inform the Commission as to the human rights situation, the degree of government compliance with the recommendations issued, and the evolution of the different topics that the Commission has addressed in its report.

2.3 Specialized Work in Certain Thematic Areas Through Rapporteurs³⁸ and Other Mechanisms

In recent years, the Commission has been developing a series of thematic initiatives dealing with some right or rights in particular or with certain collective rights. This is complementary to the Country Reports, which relate to the general human rights situation in a specific state (except, infrequently, when a report has been prepared on a specific situation in a country, such as its prison conditions). In this regard, reports have been prepared by rapporteurs on themes such as the rights of women, of persons deprived of their liberty, the condition of migrant workers and their families, and so on.

Some of these reports have been written by the Commission as a whole. Nevertheless, beginning in the 1990s, a group of rapporteurs has been organized within the Commission. As is well known, the rapporteurs in the United Nations play an important role in matters regarding human rights. There are numerous thematic rapporteurs in the UN.

A series of thematic rapporteurs has been created during recent years in the Commission (on prisons, on the rights of women, on the rights of indigenous peoples and on freedom of expression, among others).

Nonetheless, these thematic rapporteurs generally enjoy a considerably lower profile in the Inter-American system than in the United Nations. The reason for this is that the resources available for them are very limited in the Commission. Except for in the case of the Rapporteur on Freedom of Expression, the Commission members themselves have been the rapporteurs. Given that the Commissioners are not full-time officials, they must perform these tasks in addition to many others. As such, their role has been limited to the preparation of some studies, which have not had the same impact as the Country Reports.

The situation has been different in the case of the Rapporteur on Freedom of Expression, which was created in 1998. Since it has its own resources, it is headed by a full-time rapporteur and has its own staff. This has led to this Rapporteur engaging in activities that

are broader than those of the others. This has consequences in several areas that are discussed below.

First, the Rapporteur prepares and publishes an Annual Report on the situation of freedom of expression in the Americas. This report is published as an additional volume to the Annual Report of the Commission.

Second, the Rapporteur follows up on cases relating to freedom of expression that are being processed in Inter-American system. This does not mean that complaints on the issue should be submitted to the Rapporteur — they should continue to be sent to the Executive Secretary of the Commission. However, when it is a complaint relating to this topic, it is appropriate to send a copy of the complaint to the Rapporteur, which will follow up on it. It is also advisable to maintain regular contact with the Rapporteur during the processing of the case.

Third, the Rapporteur monitors attacks against freedom of expression at the domestic level of the states, even when such violations have not come before the Inter-American system. In this respect, the role of NGOs is crucial, since they usually make such facts known and call the attention of the office of the rapporteur to them. The Rapporteur may issue press releases and/or contact the authorities of the respective country in order to deal with the violations that have occurred.

Finally, the Rapporteur takes part in the Commission's delegation during the on-site visits that it makes, and also conducts its own visits. The former – in which the Rapporteur accompanies the Commission in the on-site visits– has become a habitual practice, and signifies a reinforcement of the Commission's initiatives in terms of the protection of freedom of expression. The Rapporteur also makes visits on its own. In general, because it is a one-person body, it is more expeditious to prepare a visit of the Rapporteur than one of the Commission as a group. For the same reason, it is convenient for local NGOs to contact the rapporteur in urgent situations to suggest the necessity of a visit.

There is also a Rapporteur on the Rights of Women within the Commission. In contrast to the Rapporteur on Freedom of Expression, the one that works on gender issues does not have staff; rather, one of the Commissioners heads it. The Rapporteur on the Rights of Women has conducted some valuable studies regarding these rights in the hemisphere, but since the position lacks staff, it is difficult for the Rapporteur on the Rights of Women to be as effective a complement in specific cases as is the Rapporteur on Freedom of Expression. On the other hand, the reports that are adopted serve to raise consciousness with regard to the rights considered therein; as such, their dissemination among civil society is very important.

A third rapporteur has been dedicated to prison conditions, so as to determine the degree to which the prisons are compatible with international human rights standards. For this purpose, the Rapporteur carried out a comparative study on the situation with regard to the OAS States.

Another rapporteur, created in 1997, addresses Migrant Workers and their families in the hemisphere. By 2002, this Rapporteur had published four reports, which are contained in different Annual Reports of the Commission. This Rapporteur deals only with migrant workers and their families when they are in foreign countries. The Commission has clarified that the rapporteur does not encompass the situation of domestic migrants, internally displaced persons, stateless persons, refugees or asylum seekers, without prejudice to the fact that some of them may become migrant workers.

Moreover, it is important to note that there are rapporteurs concerned with the situation of internally displaced persons, the rights of indigenous peoples, and the rights of the child.

In spite of the limitations faced by the rapporteurs due to the lack of resources, it is appropriate to keep the rapporteurs informed as to the issues that concern them. This contributes to, among other things, providing impetus to individual petitions regarding such cases, or ensuring their inclusion in the Country Reports.

Another body pertaining to the Commission in thematic issues is the Unit for Human Rights Defenders. This unit was created at the end of the last decade at the behest of the NGOs, for the purposes of strengthening the mechanisms for the protection of such persons and calling the attention of states to the human rights violations they are subject to.

The issues tackled by the Commission are not limited to the above since, depending upon the circumstances, it may also undertake studies in other areas. For example, after the attacks on the Twin Towers, the Commission prepared an extensive thematic study on terrorism and human rights, showing how the fight against terrorism must conform to international human rights standards. It is valuable to disseminate and utilize these studies, as well as the reports of the Rapporteurs, for the protection and promotion of human rights.

2.4 Human Rights Advocacy Work and Other Initiatives

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

Advocacy Work

This work, which the Commission engages in through seminars, publications, internships and other means, has basically been in three broad areas: the dissemination of human rights in general, the promotion of the Inter-American system of human rights, and education on the necessity of incorporating human rights into domestic legal systems.

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 emphasizing human dignity, the essence of human rights. This path intends for 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 efficacy of these rights, given that if the victims of violations

are not fully aware of them, impunity will be favored. It is also tied into support for genuinely democratic systems; in effect, the awareness of rights is a galvanizing factor in citizen participation, as well as in citizen control of public administration.

The second area points to the advocacy work that the Commission has undertaken in making the hemisphere's inhabitants aware of the existence of the Inter-American system of human rights, 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 Commission's advocacy work has concentrated precisely on this area, due to the Commission's direct interest in ensuring that civil society is kept well informed in this respect and that it knows who to go to and how to do so in the case of a violation of its rights.

The third and last area refers to the advocacy work that emphasizes the need for incorporating human rights into domestic legal systems. The international bodies play a subsidiary role 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 Inter-American system is used only in cases of real necessity.

As can be appreciated, the Commission performs important advocacy work. Nonetheless, these activities cannot be understood as anything but a complement to the central tasks of the Commission: the tasks of protection. There are numerous academic, non-governmental and state bodies that carry out human rights advocacy work, and for that reason, the role of the Commission 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 Court, which does not possess the same functions as the Commission) has the same role as the Commission.

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

Other Activities of the Commission

The Commission has a very broad mandate, for which it is authorized to carry out a wide and 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, as was described in Chapter I, the Commission as well as the political bodies of the OAS participate in the preparation of these Inter-American human rights instruments. In the case of some such treaties and declarations, the Commission has played a very important part; other times, the

political bodies of the OAS have not followed closely the proposals of the Commission.

Generally, when civil society organizations are interested in promoting the adoption of a treaty or declaration, it is important that they establish regular contact with the Commission, so as to detect the degree to which there are points of convergence regarding the content and mechanisms meant to be established through such instruments. When this is the case, the Commission may become an important ally of the NGOs. This is aside from the fact that, as indicated in Chapter I, it is crucial to lobby the states, which definitively adopt the instruments and establish their content and mechanisms.

As for the second aspect, the Commission is authorized to receive inquiries from OAS States on issues relating to human rights, and is able to give its advice with respect to the matter. Recently the Commission has been giving greater relevance 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. NGOs can advocate within their own states for the state to make an official request of advice from the Commission on specific human rights issues.

For more information on NGOs and the Inter-American system, please refer to a copy of the OAS publication, *Human Rights: How to Present a Petition before the Inter-American System*, included in the Appendix VI.

III. THE ROLE OF NGOS AT THE COMMISSION

3.1 The Role of NGOs

When a State, through direct or indirect agents, infringes on any article of the American Convention on Human Rights and does not remedy it through its domestic legislation nor provide reparations to the victims, the victims have the right to file an application with the Inter-American Commission, provided the State has ratified the Convention. As it will be seen in this chapter, the application may be filed by one person, a group of persons, or even an NGO. In practice, it is most common for NGOs to file a petition, either jointly or independently, with the Commission. NGOs are more acquainted with international human rights legislation, they typically have more resources than the victim to conduct the work, and they may have experience with the Inter-American system.

NGO participation in the process is nothing new, but it was not until the recent political changes in Latin America that NGOs' roles became vitally important when bringing cases before the Inter-American Commission.

Initially, bringing cases to the Inter-American Commission was the primary goal of several NGOs. Global Rights began bringing cases to the Inter-American Commission in the early 1990s in an effort to seek individual justice, to strengthen the Inter-American system and to promote domestic reform and protection of human rights. Other NGOs, in particular the Center for Justice and International Law (CEJIL), an NGO founded in 1991, began filing illustrative cases of systematic human rights violations in the different countries with the main organs of the Inter-American system.

“Bringing representative cases, exemplifying systematic human rights violations, to the Inter-American Commission and Court has demonstrated the impact the regional protection system may have not only on victims and their next-of-kin, but also on laws, practices, and policies of countries in the region.”³⁹

Specific examples of activities carried out by NGO's include: a) restoring the right to education for a Haitian-descent girl born in the Dominican Republic (Case of Dilicia Yean and Violeta Bosica), in the field of economic, social, and cultural rights; b) an indigenous community in Nicaragua (Case of Awas Tingni) establishing communal land rights; and c) providing medical treatment for HIV/AIDS patients in Chile, in defense of the right to health (precautionary measures). Additionally, concerning labor rights, the State of Panama received a verdict of guilty for firing 270 workers on account of their joining peaceful protests and demonstrations against the government (Case of Baena Ricardo).

As seen, the system works not only in traditional litigation cases dealing with the right to life; there are other exemplifying cases where NGOs such as Global Rights, CEJIL, Lawyers

Committee for Human Rights, Casa Alianza, the Guatemalan Association of Missing Detainee Next-Of-Kin (FAMDEGUA), and many others, have managed to protect and make amendments to internal legislations, in cases of Childrens' Rights, Women's Rights, and Freedom of Speech, among others.

NGOs have played and will continue to play a very important role in disseminating information about OAS political initiatives on human rights issues. Since the mid 1990s they have delved deeper into debates within OAS political organs. NGOs have been promoting their joint position concerning the steps needed to strengthen the Inter-American system.

Civil society organizations have promoted an independent representation before the Court and the establishment of a mechanism –for assessing the merits of a case before filing it with the Court– that would take the victim's interest into account. They have also played a major role recently in advocating for State compliance with Commission and Court judgment orders.

Latin American political changes in the late 1980s and early 1990s enabled a strengthening of the Inter-American human rights system, and therefore a greater openness in filing cases with the Commission, and then referring them to the Inter-American Court. It must be remembered that in the Court's first ten years only four contentious cases were heard, and in early 2001 there were more than 36 cases being tried.⁴⁰

Because of these advances, NGOs should now see the Inter-American system as an attractive alternative for procuring justice, and several NGOs, sometimes organized in alliances, have started getting closer to the Inter-American system in order to strengthen their work on human rights in the domestic environment.

As mentioned in Chapter II, there is currently an NGO coalition with the purpose of opening a discussion space to channel initiatives that insure civil society participation and advocacy in defending human rights in the Americas. The coalition is made up of more than 300 NGOs. This coalition meets twice a year, on the occasion of Inter-American Commission sessions in Washington, to follow up on and debate human rights issues that are being discussed in OAS political organs.

3.2 What can NGOs do?

- NGOs should complement the Inter-American system and not take over many of the system's functions. It is the Commission's obligation, according to its functions, to exercise a promotional and educational role about human rights. NGOs should demand from their States and the Commission more and better promotional and education work within the countries.
- Although most of the countries in the region today have Human Rights Offices or Ombudsman's Offices and their functions include promoting and educating about human rights, in many cases these activities are geared toward the universal instruments more than to the regional instruments on human rights. NGOs should advocate for inclusion of regional instruments in their efforts.

- NGOs should monitor the work of the Inter-American Commission on Human Rights. The Guidelines for the participation of the civil society have opened a politically valuable door to participate in the various bodies of the Organization of American States (OAS) and a unique opportunity of doing a better job.
- NGOs should pressure the Commission and the Court to have enough well trained staff to monitor human rights from a holistic point of view rather than just a judicial perspective.
- NGOs should work for the Commission to prepare more recommendations for the states about public policies in different issues dealing with human rights, such as the indigenous people, children, women, African descendants, migrants, the disabled, and others.
- NGOs should influence the Commission to promote legislative reforms in the states to adapt their internal legislation to the international instruments.
- NGOs should pressure the political bodies in the OAS to draft projects of declarations and treaties about human rights, such as promoting the draft of the Inter-American Declaration against Racial Discrimination, a process that could use the wide participation and consultancy of civil society.
- The great challenge of NGOs is to make sure that the work of the Commission is preventive more than reactive, so far the majority of its work has been studying cases of violations to human rights and submitting them to the Court.
- NGOs should have an impact on the system from within the system itself; that is, through the Ambassadors before the OAS who represent the citizens of the Americas in order to consolidate an Inter-American system rather than a Latin American one.
- The efficiency and effectiveness of the Inter-American system should be measured not according to the number of cases submitted each year, but according to the political will of the states to make structural internal changes not to violate the human rights of their citizens.
- NGOs should continue exercising their role as denouncers, but they should also start exercising and strengthening a role of creating proposals and building alliances with other NGOs at the national and regional levels in order to achieve that objective. There has been some progress in this sense, but the road to travel is still long and thorny.

Undoubtedly, NGOs have played an important role in the strengthening of the Inter-American system and spaces for their participation have been opened, but the true future of the system lies on the political will of each of the states that comprise the General Assembly of the OAS and on the participation and influence of the civil society.

3.3 Conclusions on the Role of NGOs

There is no doubt that NGO role is vitally important in strengthening the Inter-American Commission and the Inter-American Court; but risks of becoming weak are still dormant, following is a risk summary:

- There is still a structural problem dealing with English-speaking states reluctance to ratify the American Convention and accept the Court's competence. As a consequence, the system continues to be a Latin American, instead of Inter-American, system.
- Many victims cannot have access to the Commission or the Court, because of the costs and resources involved; consequently, many people are left without international protection.
- There is a series of procedural problems, ranging from slow judgment of cases before the Commission and the Court, which can take several years, to the need for letting victims take their case directly to the Court (*jus standi*), without having to rely on the Commission. Some proposals suggest providing the Commission and the Court with more resources, in order for them to have sessions more often, or to make them both permanent organs.
- In countries' domestic laws there is little legislation to implement Art. 68.2 of the American Convention, which provides for the possibility of enforcing Inter-American Court judgments through the domestic procedure for enforcing judgments against the State.
- If the OAS is serious about strengthening the Inter-American system, OAS political organs and member states must back up their express commitment to protection organs through approving a correspondingly sufficient annual budget.

Undoubtedly, strengthening the Inter-American system implies knowing it, using it, and promoting it. But we believe the best way of strengthening the system is by reinforcing domestic legislation, so they are incorporate and rely on international law, including the Inter-American human rights instruments.

We will know the system is succeeding when fewer cases are being filed with the Commission and the Court because there is sufficient domestic remedy available. This can only be accomplished by promoting human rights domestically, which is also one function of the Commission and which is where NGOs can play a vitally important role.

Global Rights expects this practical Guide to allow NGOs to take a general look at the system, how to have access to it and the benefits that it has had for the victims and/or their families who have used the system.

IV. APPLICATION OF THE INTER-AMERICAN SYSTEM IN THE DOMESTIC SPHERE

This Chapter deals with the application of Inter-American human rights law in the domestic sphere. This includes both the incorporation and use of human rights treaties in domestic courts, and the implementation of recommendations of the Commission, friendly settlements and judgments of the Court. The implementation stage of the decisions is probably the most important aspect of the system for the protection of human rights. It is of little use to have a legally irreproachable judgment or recommendation from the Court or the Commission if their decisions are not implemented by the state.

The good faith and goodwill of the states that have ratified the treaties is fundamental during the implementation stage in order for the system to be effective. Furthermore, as throughout the entire process, the active participation of the petitioners is required so that the states will guarantee the due protection of the rights contained in the treaties.

4.1 How are human rights treaties incorporated into the domestic sphere?

The international system for the protection of human rights established by the treaties rests upon the fact that the institutions of the States Parties are primarily responsible for guaranteeing such protection and creating the necessary mechanisms for its efficacy in the domestic sphere. The states have autonomy to define the manner in which they shall incorporate the human rights treaties into the national legal system. Nevertheless, as noted in Chapter I, the treaties themselves may establish obligations that limit the states' room for maneuver, Article 2 of the American Convention states expressly that the states agree to adopt the legislative or other measures necessary to make effective the rights and freedoms contained therein.

States must decide in accordance with their constitutional systems what status the human rights treaties will have within the national legal system. Many constitutional reforms in recent years have given constitutional status to human rights instruments. In some cases, constitutional status is granted in general, for all of the international treaties whose purpose is the protection of human rights. For example, the constitution of Ecuador stipulates that the State guarantees "the free exercise and enjoyment of the civil, political, economic, social and cultural rights enunciated in the declarations, pacts, conventions and other international instruments in force." In others, the constitutions themselves identify those treaties that shall have constitutional status. The 1994 constitution of Argentina, Article 75, clause 22 establishes that a series of international human rights instruments "...in the full force of their provisions, have constitutional status..."

Finally, it is important to make clear that the incorporation of human rights treaties into the legal systems of countries through ratification does not always suppose that their norms or

provisions automatically create legal obligations that open the way for judicial action. The States may need to modify domestic legislation to bring it into conformity with the State's international obligations. It is for that reason that Article 2 of the American Convention expressly established that States undertake to adopt the legislative measures that are necessary to give legal effect to human rights.

4.2 Application of Treaties in the Local Sphere

When a state incorporates a human rights treaty into its legal system through its signature and ratification, in addition creating international obligations of the State, the rights contained in such instrument broaden the scope of legal protection in the domestic legal system. *As such, it is important to take into account that the rights protected by the treaties may be invoked before local courts in order to demand that the state guarantee and protect them.*

In addition to the incorporation of human rights treaties into domestic law, there are new decisions that have also incorporated the jurisprudence of the organs of the Inter-American system as a guide for the interpretation of conventional precepts. In the case of *Giroldi H. In re: Writ of Cassation* of 1995, the Supreme Court of Argentina held: "11) [t]hat the constitutional status of the American Convention on Human Rights ...has been established by the express desire of the framers of the constitution 'in the full force of its provisions' ... that is, the Convention effectively governs in the international sphere and its effective jurisprudence is applicable by the international tribunals competent to interpret and apply it. It follows that said jurisprudence should serve as a guide for the interpretation of the conventional norms insofar as the Argentine state recognized the jurisdiction of the Court to take cognizance of all cases concerning the interpretation and application of the American Convention..."

Thus, when treaties are incorporated in the legal systems of countries, they should also be included in the practice of litigation whose purpose is the protection or reparation of rights forming part of those treaties. The American Convention itself establishes in Article 25 the right to judicial protection when it affirms that "[e]veryone has the right to simple and prompt recourse, or any other effective recourse, to a competent court or tribunal for protection against acts that violate his fundamental rights recognized by the constitution or laws of the state concerned or by this Convention..."

Experience shows, however, in spite of the major development of international human rights law during recent decades, the use of the treaties on this subject is still not very widespread among most of the judges and attorneys in the countries of the region. This tendency is beginning to change, since in some countries of the region the Supreme Courts of Justice, the Constitutional Courts, and even lower courts, are incorporating human rights treaties such as the American Convention and other Inter-American or international instruments into their decisions.

The Use of International Human Rights Law by the Constitutional Court of Colombia

The Constitutional Court of Colombia has been very innovative in the utilization of the Inter-American human rights system in order to render decisions that have had a positive impact on the greater protection of the rights of victims of grave violations of human rights. In the far-reaching Judgment C-04/03, a Colombian citizen brought a public interest suit alleging the unconstitutionality of a provision of the Code of Criminal Procedure that, in principle, appeared to prevent the review of a final judgment of acquittal that had resulted in the declaration of the international responsibility of the State for the violation of human rights.

This norm generally benefited members of the armed forces or other illegal armed groups accused of grave human rights violations that were acquitted in military or civilian courts and could not be tried again. Based on the grounds of international human rights law and on the vast jurisprudence of the Inter-American system, the Constitutional Court considered that the challenged norm should be interpreted to allow for the review of cases where there is a duly declared violation of human rights, therefore the provision is under this interpretation. The court held that "...the action for review on this ground is also proper in cases involving the preclusion of the investigation, discontinuance of legal proceedings and judgments of acquittals, provided that they concern human rights violations or grave breaches of international humanitarian law, and a domestic court decision or a decision from an international body for the supervision and control of human rights, formally accepted by our country, has proven the existence of the new fact or of the evidence that was unknown at the time of debate."

Taking into account that impunity for the violation of human rights is one of the most serious problems faced by Colombia, and independently of the aspects of the judgment that could be improved, the decision of the Constitutional Court contributes important elements to overcoming impunity and contributes to the development of the practice of states to better articulate their domestic systems in order to comply with their international obligations.

How Treaties Can Be Used to Litigate at the Local Level

With regard to litigation strategies, there are no limits on the ways to incorporate treaties into domestic legal cases. To the contrary, it is important to be innovative and persistent in order to change the practices of the judicial branches, which, in many cases, strongly resist this change.

First, if dealing with a lawsuit concerning facts that affect any of the rights protected by a human rights treaty, and the state has a direct or indirect responsibility, it is appropriate to include the norms of those treaties together with the national, provincial or local laws invoked as a source of law. One should also include the jurisprudence of the organizations of protection — whether it be the Court or the Commission- that have interpreted the scope of the right in question in cases in which they have been involved or, in the case of the Court, in one of the Advisory Opinions it has issued.

One variant of legal action that is very widespread among civil society organizations has been the use of writs of *amparo*⁴¹ or *habeas corpus* when such action is authorized in cases of flagrant violations, or the imminent danger of violation, of fundamental rights on the part of the state. In most countries *amparo* or *habeas corpus* is issued to protect the fundamental rights and freedoms contained in national constitutions and in human rights treaties.

Another strategy that has yielded positive results in promoting the application of human rights treaties by local courts is the filing of *amicus curiae* briefs with international human rights arguments. The *amicus curiae* briefs are generally filed by civil society organizations, universities and even organizations of the state, when, according to the specific interest of these actors, they identify cases in which it is important to obtain legal judgments that advance the protection of human rights using international law.

Finally, the education and training of judges in the application of human rights treaties is indispensable. Universities should play a leading role in educating the different judicial actors on the incorporation of international human rights law at the local level. Complementing such educational efforts, the use of litigation by human rights organizations or activists can also play a fundamental role in promoting such practices. As part of a litigation strategy, it is important to develop advocacy events such as seminars, conferences and courses for national, state and local judges. These activities may be developed by the special human rights organizations under the charge of the government, whether national or local; but the organizations with experience in human rights and the administration of justice should also contribute to the training of the members of the judicial branch and publish materials on the subject.

4.3 Implementation of the Decisions of the Commission and the Court

In contrast to national courts, the Court as well as the Commission lack means of direct coercion through which they can enforce their respective decisions or recommendations when they declare a state responsible for the violation of human rights and order certain measures of reparation for the victims. In short, the effectiveness of international or regional systems for the protection of human rights depends upon the willingness of states to comply with the obligations they assumed when they ratified the treaties that created those obligations.

However, this does not mean that there are no means of promoting the implementation of the decisions of those organizations. To the contrary, if examined from a historical perspective, it is easy to see that implementation of the decisions of the Commission and the Court has increased contributions to the strengthening of the system for the protection of human rights in the region.

There are at least two levels that the users of the system should take into account to promote compliance with the decisions of the human rights protection organizations. The first, which was mentioned in Chapter I, is the role of the political bodies of the OAS, which have the collective responsibility of promoting compliance with the judgments of the Court and the recommendations of the Commission. The Quebec Plan of Action⁴² approved at the Third Summit of the Americas maintains that the states shall continue “promoting concrete measures to strengthen and improve the Inter-American human rights system, in particular the functioning of the Court and the Commission focusing on: (...) complying with the decisions of the Court and following up on the recommendations of the Commission...”

Although the monitoring that the General Assembly exercises in regard to compliance has not been shown to be effective, the resolutions that it issues reaffirm the commitment of the states to the functioning of the system. For example, resolution AG/RES. 1890 (XXXII-O/02) on the evaluation of the functioning of the Inter-American system for the protection and promotion of human rights for its improvement and strengthening reaffirms the willingness of the states to comply with the mandate of the Quebec Summit regarding compliance with the judgments of the Court and recommendations of the Commission. ***Civil society plays a key role, through the possible forms of participation in the political bodies of the OAS, in order to advocate compliance with the Quebec Plan of Action and the successive resolutions passed by the General Assembly of the OAS on the matter.*** The human rights organizations that participate before these bodies have taken the issue of compliance as a fundamental claim on their agenda for the strengthening of the system and have made significant advances.

The second level concerns the measures adopted by the states in the domestic sphere for the purpose of creating specific mechanisms, or modifying domestic legislation in order to fulfill the recommendations of the Commission, friendly settlements, agreements without friendly settlements, and judgments of the Inter-American Court. It is important to observe

that the Commission and the Court have demanded the modification and even the annulment of laws regulating very important social or political matters, such as marriage, freedom of expression, forced labor, amnesty, treason and terrorism and the rights of indigenous peoples.

With respect to the creation of a specific mechanism it is possible to mention four cases involving Colombia, Peru, Costa Rica and the Bolivarian State of Venezuela. In 1996 Colombia passed law 288, which sets up instruments for the indemnification of victims of human rights violations by virtue of the provisions of the United Nations Committee on Civil and Political Rights, the Court and the Commission. However, the implementation of this mechanism with respect to the recommendations of the Commission has not been effective since, among other things, the state agencies determined that reparations could not be made until a decision from the Commission so recommends. Due to this restrictive interpretation, this mechanism still has not operated adequately in cases that are in the process of reaching a friendly settlement.

Peru has also created a mechanism of implementation through the enactment of law 27775. This norm governs the procedure for the enforcement of judgments issued by supra-national tribunals constituted by treaties that have been ratified by Peru and that contain sentences ordering the payment of money, whether for the indemnification of damages or merely declarative. Since the enactment of this law, only one decision of the Court has been successfully implemented using this mechanism. This norm has been criticized for being limited to judgments that order pecuniary reparations and ignoring other measures of reparation that are very important in cases of human rights violations.

Another example is the agreement signed between Costa Rica and the Court, which, in Article 27, provides that the decisions of the Court or of its President shall have the same effect as those issued by the Costa Rican judicial branch once such decisions have been transmitted to the administrative and judicial authorities of Costa Rica. Article 15 of the Constitution of Honduras states that “Honduras embraces international law principles and practices espousing human solidarity, the self-determination of peoples, non-intervention and commitment to universal peace and democracy. Honduras declares the inevitable validity and obligatory execution of international arbitral or legal judgments.”

Lastly, it is worthwhile to note the case of the Constitution of the Bolivarian Republic of Venezuela, Article 30 of which establishes that “[t]he State has the obligation to make full reparations to the victims of human rights violations for which it may be held responsible, and to the legal successors to such victims, including payment of damages. The State shall adopt the necessary legislative and other measures to implement the indemnifications provided for under this article.” Article 31 of the same constitution establishes that the state shall adopt such measures as may be necessary to enforce the decisions of the international organizations created by the human rights treaties to which Venezuela is a party.

For practical use, it is important to mention that these mechanisms have not always proved to be effective. Nonetheless, they constitute a tool that, if used by victims and organizations that use the system of protection, may result in greater efficacy in the utilization of the Inter-American system. *On the other hand, the creation of implementation mechanisms is a*

growing tendency in the region and may well be an issue for civil society organizations to include in their agendas for influencing their governments.

4.4 Implementation of the Recommendations of the Commission

Even though the Commission's new Regulations establish as a general principle that cases involving states that have accepted the jurisdiction of the Court should be submitted to the Court, the possibility does exist that the Commission will decide not to do so and then issue an Article 51 Report containing recommendations to the state.

Although the reports issued by the Commission are not the same as a legal judgment of the Court, the conclusions and recommendations made therein are binding upon the state involved in the case. This obligation arises from the agreement assumed by the states upon ratification of the OAS Charter, the American Convention and other instruments in which the states themselves have agreed to respect and guarantee the protections contained in those instruments. In order to fulfill these commitments, the states have also created the Commission as an independent specialized body to promote the observance and protection of human rights, as well as to monitor the observance of these obligations. The reports of the Commission are legitimate and binding interpretations of international treaties, and they are therefore given the legal value that the treaty itself has. The states may dispute such interpretation by seeking recourse before the Inter-American Court of Human rights.

It is therefore important for civil society organizations to understand how it is possible to use these recommendations, and above all the strategies that can be developed so that the states will indeed abide by those recommendations.

The case of *María Eugenia de Morales de Sierra v. Guatemala*⁴³ can be cited as an example of the impact of the Commission's reports. The complaint filed by the petitioner in this case alleged that several provisions of the Civil Code of Guatemala, which established a distinction with respect to the roles of each spouse within a marriage, were discriminatory and therefore violated Articles 1 (1), 2, 11, 17 and 24 of the Convention as well as the Convention on the Elimination of All Forms of Discrimination against Women⁴⁴. During the processing of the case, the government of Guatemala informed the Commission that it had adopted measures to modify the norms challenged by the petitioner. Following the publication of the Article 51 Report in which the Commission recommended that the State make changes to its Civil Code, the Congress of Guatemala reformed several of the articles denounced by the petitioner in accordance with the recommendations issued by the Commission.

Although the above example has elements that are positive for a case of effective compliance with the recommendations of the Commission, this is not the rule, and unfortunately, there are many Commission decisions that the states either do not comply with or comply only partially with. For that reason, it is crucial that NGOs adopt a strategy for ensuring that states do effectively comply with the recommendations made in the so-called "Article 51 Report".

Experience has shown that it is important for the Commission to maintain a monitoring role over such implementation. Therefore, keeping the case open within the sphere of the Commission until the recommendations are met completely will be a great help to the petitioners in exerting pressure on the state to implement them. Maintaining an open path to the Commission will allow the petitioners to negotiate with the state at a level of greater cooperation and equality.

How to Use the Follow-Up Mechanism of Article 46 of the Regulations of the Commission

The Commission's new Regulations created a follow-up mechanism to the recommendations included in the Article 51 Report. The effectiveness of this mechanism of implementation will depend in good measure on the interest of the petitioner. For the petitioners and/or the organizations that litigate the cases, having this follow-up mechanism will facilitate their negotiations with the state in the domestic arena. The state is more predisposed to attend to the claims of the petitioners when they are made before the Commission. As such, the petitioners must keep the Commission constantly informed of the status of the implementation. If the process of negotiation with the state does not progress, *the petitioners must evaluate the suitability of holding a hearing in order to inform the Commission that the implementation has not been effectuated and to try to remove the obstacles to the state's compliance.*

There are occasions on which the state's compliance depends upon factors that go beyond the willingness of the executive branch, which usually represents the state before the Commission through its Ministry of Foreign Affairs. One example of this is when compliance consists of the enactment of a law by legislative bodies, which is composed of representatives of different political parties. Another example is, in the case of federal states, when the recommendation must be implemented by a province or department that has generally not participated in the process before the system and may not even feel obligated by the commitment that the state has assumed. It may be that for strategic reasons it is not convenient to publicly expose the state's non-compliance since it would further impede negotiations to achieve its implementation. If this conclusion is reached after evaluating the circumstances, one alternative that may be more effective is to hold a working meeting with the rapporteur in charge of the country in the Commission. This meeting could be held during the period of sessions or when the rapporteur conducts working visits to the country together with the attorney from the Secretariat of the Commission in order to follow up on cases and on the human rights situation in general. These working meetings provide an informal framework, which, often times, benefits negotiation between the petitioners and the representatives of the state promoting concrete advances with regard to implementation.

4.5 The Implementation of Friendly Settlement Agreements

The agreements reached through friendly settlement procedures have had greater effectiveness in terms of implementation. In the beginning, victims had doubts about the relevance of negotiating reparations with the state in cases of grave violations of human rights such as forced disappearances or extra judicial executions, and they were distrustful of the effectiveness of this mechanism. However, many states have seen friendly settlement as a way to delay or avoid a Commission decision against it.

Although there are still some doubts concerning the use of this mechanism, in recent years the implementation of friendly settlement agreements has proven to be a very efficient resource in achieving concrete advances in the protection of human rights through agreements with very diverse scopes and content. Additionally, these processes have made structural changes possible within institutions that had been an obstacle to the full validity of human rights for all of society or a sector thereof. For example, the implementation of friendly settlements has allowed for the promotion of legislative reforms or public policies in favor of human rights.

One example of the effectiveness of friendly settlement is the case of *Verbitsky*⁴⁵. Horacio Verbitsky is a journalist who had filed a complaint against Argentina for the violation of the right to freedom of expression contained in Article 13 of the American Convention. The journalist had been convicted by the national courts for the offense of *desacato*⁴⁶, which criminalized speech considered offensive to public officials, as a result of an article Verbitsky wrote on the Supreme Court. In the processing of his complaint before the Commission, the petitioner and the Argentine state came to an agreement that included the repeal of the legal definition of *desacato* from the Criminal Code of Argentina and the publication of a report by the Commission on the incompatibility of this criminal concept with Article 13 of the Convention. In this case, the use of the friendly settlement mechanism served to promote legal reforms increasing the guarantee of the right to freedom of the press, not only in Argentina but also in other countries of the region.

Another example of a friendly settlement that produced significant changes at the domestic level is the case of José Pereira. In 1994, various NGOs presented a petition before the Commission against Brazil, alleging facts related to a situation of slave labor, attack on life, and the right to justice. José Pereira, a worker on the “Espiritu Santo” farm in the southern part of the State of Pará, was gravely wounded and another worker was killed during an attempt to escape conditions of forced labor. Mr. Pereira was among 60 workers who were subjected to inhuman and illegal working conditions. Although private individuals attacked the workers, the petition alleged that the State’s lack of interest and the inefficiency in the investigations and legal processes against the killers and those responsible for the exploitation constituted a failure to protect on the part of Brazil.

After a long trajectory through the procedures of the Commission, in 2003 the petitioners and Brazil subscribed to a friendly settlement agreement. In it, Brazil recognized its international responsibility and established a series of commitments related to, among other things, preventative measures, legislative reforms, measures to monitor and punish slave labor, and measures designed to raise awareness about slave labor. With respect to

legislative reforms, Brazil agreed to make every possible effort to gain approval of a legislation as part of a national plan to eradicate slave labor. The proposed legislation included penalties for the exploitation of child, slave and semi-slave labor. Moreover, Brazil agreed to establish federal authority to prosecute the crime and to strengthen the public ministry of labor to enable it to supervise the immediate application of existing legislation. Finally, it agreed to carry out, at the national level, a campaign to raise awareness about slave labor.

4.6 Execution of Compliance Agreements without Friendly Settlement

Another type of implementation exists when states recognize responsibility through the execution of compliance agreements. Some states have submitted compliance agreements to the Commission even though there were no friendly settlement proceedings.

Ecuador has followed this practice, assuming responsibility in a group of cases and agreeing to implement the appropriate reparations with regard to violations of the rights of different victims. Guatemala has also executed these types of compliance agreements.

One variation on this practice was carried out by the transitional government of Peru following the fall of the regime of Alberto Fujimori. On February 22, 2001, Peru's Minister of Foreign Affairs issued a joint communication with the Commission in which it announced a broad proposal to resolve 165 cases that were at different stages of processing. The volume of cases included in the proposal represented over 50% of the total number of complaints that the Commission had pending against Peru. These types of gestures serve to demonstrate the commitment to human rights of governments transitioning to democracy after replacing authoritarian regimes. At the same time, they are a show of support for the organizations of the system. In the case of Peru, the Commission had played a leading role in the denunciation of serious human rights violations during the Fujimori regime.

The case of *Carmelo Soria Espinoza*⁴⁷ illustrates the difficulties of reaching a friendly settlement, despite the good will of the state, when the matter in question involves impunity for human rights violations committed by a previous government, a phenomenon that is sadly common in the Americas. On the other hand, it illustrates equally the importance of the persistence of NGOs in pressing the legitimate demands that the state fulfill its obligations.

In 1997, the Commission received a complaint from the daughter of Carmelo Soria Espinoza for the violation of the right to access to justice for Chile's failure to investigate the murder of her father in 1976. Mr. Soria was abducted by agents of the secret police of the military regime and later murdered. In 1996 the Chilean Supreme Court of Justice managed to establish that agents of the State murdered Mr. Soria. However, the criminal procedures against them were definitively dismissed as a result of the application an Amnesty Decree Law 2.191 that the government promulgated in 1978, so that the crime went unpunished. As a consequence, the complaint requested that the Commission declare the self-amnesty decree law incompatible with Chile's obligations under the American Convention.

In 1998, the Commission made itself available to the parties for the purpose of achieving a friendly settlement of the case. Chile expressed its willingness to remain open to an agreement with the relatives of the victim, but emphasized the difficulties that it was having in arriving at a friendly settlement in the matter. Specifically, Chile argued that, although the democratic government was committed to bringing its domestic legislation into conformity with the American Convention, the modification or annulment of the self-amnesty decree law, which was promulgated under the military regime, presented complex legal problems. As a consequence of the circumstances of the return to democracy the democratic government had to adhere to the rules imposed by the military regime. Finally, the democratic government sustained that in Chile the executive branch lacked authority to nullify the decree law and that it cannot invalidate the decisions of the judicial branch.

In 1999, the Commission adopted a report on the case in which the Commission concluded that Chile had violated its international obligations because of the dismissal of criminal charges in the case of Mr. Soria denied his daughter's right to justice. Moreover, the Commission concluded that, notwithstanding the arguments of the government of Chile, the self-amnesty decree law was incompatible with the Chile's obligations under the American Convention, and recommended that the State reform its domestic legislation in a manner that nullified the self-amnesty decree law.

However, the negotiations between the State and the family of Mr. Soria continued. A series of dramatic developments, such as the arrest in London of August Pinochet, and especially a series of rulings by the high court of Chile with respect to disappearance cases, produced important changes in Chile. In 2003, the Commission received a commitment signed by the State of Chile regarding the fulfillment of the Commission's recommendations. In the commitment, the State agreed, among other things, to make a public declaration recognizing the responsibility of the State, to pay an indemnity, and to offer measures of symbolic reparation. With regard to the modification or the nullification of the self-amnesty decree law, the result was less satisfactory. However, the government of Chile was able to affirm that the Supreme Court of Chile, in connection with other cases, was interpreting the decree law to mean that it was not possible to apply the amnesty law in those disappearance cases, considering them to be on-going or permanent crimes, so that the court was bringing its rulings into conformity with international human rights norms.

Although Chile was not able to nullify the self-amnesty decree law for political reasons, the lobbying before the Commission in this and in other important cases, intensified the pressure on the national courts, a factor that contributed to the reinterpretation of the decree law in such a way as to permit the investigation of crimes that in the past remained absolutely unpunished.

4.7 Examples of Implementation of the Judgments of the Court

There is a binding nature of the judgments issued by the Court and a mandate that the Court has to conduct follow-up on implementation of their judgments. We will now look at how this follow-up mechanism of the Court has functioned.

The complaint in the case of *The Last Temptation of Christ (Olmedo Bustos and Others)* was filed by the Commission on January 15, 1999 and refers to the judicial censorship of the showing of the film *The Last Temptation of Christ*, which was affirmed by the Supreme Court of Chile on June 17, 1997. The Commission considered in its complaint that this decision violated the rights to freedom of expression and freedom of conscience enshrined in Articles 12 and 13 of the American Convention, to the detriment of Chilean society and in particular to the petitioners who had filed the claim before the Commission.

On 2001, the Court issued a decision on the merits and reparations and ruled that Chile had violated the right to freedom of thought and expression recognized in Article 13 of the American Convention to the prejudice of the petitioners; and, in turn, it found that the State had failed to comply with the general duties of Articles 1(1) and (2) of the American Convention in connection with the violation of the right to freedom of thought and expression. On these grounds, the Court decided that Chile must modify its domestic laws in order to eliminate censorship and allow the showing of the film *The Last Temptation of Christ*. It also ordered the State to reimburse the victims and their representatives for the expenses they incurred in domestic proceedings and in the international proceedings before the Inter-American system through the Commission.

As part of the implementation of the judgment the Chilean National Congress approved a constitutional reform bill designated to recognize the right to free artistic expression and the elimination of cinematographic censorship, which was substituted by a rating system regulated by law. On the other hand, the State informed the Court of the approval of a Supreme Decree approving the Regulations on Film Ratings, thus demonstrating that the domestic legal system had been modified so as to eliminate the prior censorship of film productions. During the process of implementation of the judgment, the State, as well as the Commission and the petitioners, sent reports to the Court on the status of the implementation. The reports submitted by the Commission and the petitioners were very useful for informing the Court when the measures necessary for compliance with the decision still had not been adopted. As part of its function of supervising compliance with its decisions, on November 28, 2003, the Court found that the government of Chile had complied fully with the judgment issued by the Court on February 5, 2001, and closed the case.

The case of *Loayza Tamayo* is another case in which, as a consequence of a judgment of the Inter-American Court, the State was obligated to implement reforms in the domestic sphere. In 1997 the Court issued a judgment in the case that Peru had violated the rights of María Elena Loayza Tamayo to personal liberty, personal integrity, and legal guarantees, and ordered that the State release Mrs. Loayza Tamayo from prison and pay a just remedy.

In 1992 members of the National Anti-Terrorism Division arrested Loayza Tamayo, whom they accused of belonging to the Communist Party of Peru-Shining Path. In her complaint to the Commission, Loayza Tamayo alleged that during ten days of detention in a military facility during which she remained incommunicado, she was tortured, raped and threatened with drowning in the ocean. Moreover, she alleged that the agents did not place her at the disposition of a special court in contravention of the decree law that governed terrorism. No legal action was taken on her behalf, because a second decree law on the crime of treason prohibited the presentation of writs of habeas corpus for crimes related to the crime of terrorism. A military tribunal, consisting of faceless judges, tried Loayza Tamayo for the crime of treason, but acquitted her. Later, the Special Tribunal of the Supreme Council of Military Justice also acquitted her for that crime, but ordered the case sent to a civilian court to consider the crime of terrorism. Finally, in 1994 Special Faceless Tribunal of the Civilian Court condemned her to 20 years in prison based on the same facts and charges.

In its judgment, the Inter-American Court resolved that Peru had violated the right of Loayza Tamayo to the legal guarantees established under Article 8 of the American Convention which protects the rights of individuals who have been tried for certain acts against prosecution for those same acts. As a consequence, the Court ordered that the State must undertake the necessary measures of domestic law so that the decree laws concerning the crimes of terrorism and treason conform with the American Convention on Human Rights.

4.8 The Awas Tingni Case

In its judgment in the case of the *Mayagna (Sumo) Awas Tingni Community v. Nicaragua*, the Court found that Nicaragua had violated the rights of the Mayagna community by granting a concession for the exploitation of forest resources in the community's traditional territory without its consent, and by disregarding the constant demands of the Awas Tingni for the demarcation of their territory. According to an "evolutionary interpretation," the Court held that Article 21 of the American Convention on Human Rights, which recognizes the right to private property, also covered "the rights of members of the indigenous communities within the framework of communal property." Setting an important precedent for the defense of indigenous peoples' rights in the international system, the Court affirmed that indigenous territorial rights are not based on the existence of formal title granted by the state, but rather on the "possession of the land" by the communities, rooted in their own "customary laws, values, customs and mores." The Court likewise recognized the importance to indigenous peoples of their relationship to the land, indicating that "[i]ndigenous groups, by the fact of their very existence, have the right to live freely in their own territory; the close ties of indigenous people with the land must be recognized and understood as the fundamental basis of their cultures, their spiritual life, their integrity, and their economic survival."

Another important aspect of the jurisprudence established by the Court in the *Awás Tingni* case is the affirmation of the duty of states to demarcate and provide title to indigenous communal lands as part of their commitment to give effect to the rights recognized in the American Convention. In the Court's interpretation, the lack of demarcation of indigenous territories prevents these peoples from being able to freely use and enjoy their lands and resources. The lack of effective legal mechanisms for demarcation therefore constitutes a violation of the legal protection and territorial rights of indigenous peoples guaranteed by the American Convention.

As reparation for the violations, the Court imposed upon Nicaragua the duty to “[delimit and title] the property of the members of the *Awás Tingni* Mayagna Community, in accordance with the customary law, values, customs and mores of that Community.” The Court further determined that the State should pay the Community the sum of US\$30,000 for legal expenses and costs, as well as invest US\$50,000 in “works or services of collective interest for the benefit of the Community”, as reparation for non-pecuniary damages caused to the Community. Lastly, the Court established the requirement that Nicaragua adopt “in its domestic law the necessary legislative, administrative, or other measures to create an effective mechanism for delimitation and titling of the property of the members of the [indigenous community]...” Following the ruling of the Court, the Nicaraguan congress enacted law 445, which establishes mechanisms for the demarcation and titling of all lands belonging to indigenous communities.

Following decades of indigenous struggle in the international system, the *Awás Tingni* case was the first case in which an international tribunal recognized the territorial rights of an indigenous community. The judgment of the Court is “definitive and not subject to appeal”, and is binding upon Nicaragua, a party to the American Convention since 1979. The jurisprudence of the Court is likewise binding upon all of the states that have ratified the Convention, and serves as a criterion for the interpretation of similar provisions of other international instruments, including the American Declaration of the Rights and Duties of Man. Finally, the Court's decision also influenced the process of the Declaration on the Rights of indigenous peoples under discussion in the Permanent Council of the OAS with the broad participation of the region's indigenous peoples.

The *Awás Tingni* case is a good example of the use of the Inter-American system for the protection of human rights which, while seeking justice in the case and within the framework of the American Convention, has effects in the context of a wider political strategy of the struggle of indigenous peoples for the collective right to the lands and natural resources that they have traditionally used. During the processing of the case before the Commission and the Court, legal strategies were combined with other strategies of mobilization around the case. Both acted complementarily, providing mutual feedback to each other throughout the process. Follow-up to the judgment also contributed to the advancement of the sensitive process of negotiation for the execution of the judgment, which is still underway. The process involved the participation of the *Awás Tingni* community, and that of an organization located in the United States that is engaged in the defense and promotion of the rights of indigenous peoples, called the Indian Law Resource Center⁴⁸, as well as the support of Global Rights through our office in Puerto Cabezas. Finally, many national and

international organizations were heard by the Court in their capacity as *amicus curiae* presenting arguments based on indigenous law, comparative law and international human rights law in support of the Awas Tingni claim. Notwithstanding the fact that many aspects of the implementation of the judgment are still pending compliance, the *Awas Tingni* case is a good example of the opportunities that can be opened through the Inter-American system.

V. THE VALUE OF THE INTER-AMERICAN SYSTEM

Since the adoption of the OAS Charter and the American Declaration on the Rights and Duties of Man in 1948, the development of the Inter-American system of human rights protections has emerged as a significant achievement for the peoples of the Americas. There are today seven human rights conventions or protocols that codify the full range of human rights within this regional system. And the Commission and the Court have become active in the defense of human rights, making them important forums in which to demand rights.

Civil society organizations are undoubtedly one of the most important actors in the greater movement to promote the full observance of human rights in the Americas. Nongovernmental organizations, individually or in collaboration with others, undertake a wide range of activities that promote human rights, such as documenting and denouncing violations, drafting domestic legislation, litigating in national courts, and promoting human rights education, training and awareness. Within this scheme, advocacy before the political bodies of the OAS is often as important as direct litigation within the Commission or the Court, and together both sets of activities represent important elements of an effective overall advocacy strategy.

This Guide presents basic information on the Inter-American system, and by way of conclusion, this chapter offers some final observations on the strategic value of that system.

5.1 The Value of the Inter-American System

The value of the Inter-American system of human rights protections derives fundamentally from the fact that the resolutions of its political bodies, the recommendations of the Commission, and the judgments of the Court all have an obligatory and binding character that States affirm upon ratification of the OAS Charter, the American Convention or other human rights conventions. The mere fact that a state has ratified a human rights treaty may often be turned into a powerful instrument for civil society activism. When it denounces a human rights violation, an NGO is demanding nothing more—nor less—than the fulfillment of the international obligations accepted by that state.

The political bodies of the OAS, along with the Commission and the Court, all lack coercive means to compel state implementation of a resolution of the General Assembly or the Permanent Council, a recommendation of the Commission, or even a judgment of the Court. However, no state may fully ignore such legal pronouncements without incurring a potentially significant political cost. The value of the Inter-American system is derived from this basic legal and political fact.

More concretely, the value of the Inter-American system is rooted in its potential to amplify the efforts of NGOs to obtain justice for human rights violations, address general human rights situations and strengthen the rule of law.

5.2 Obtaining Justice in Individual Cases

The Commission and the Court represent fora where justice may be pursued after legal efforts before national tribunals have been exhausted or denied, in contravention of a State's obligation of due diligence to administer justice. The Commission must respect the exhaustion of domestic remedies requirement when it considers the admissibility of an individual petition. But that exhaustion requirement also points to the inherent value of the system, as the exhaustion or denial of domestic remedies then becomes the motive for an appeal to the regional system. When the possibility of justice is extinguished in the local sphere, justice may still be pursued before the Inter-American system.

The Commission and the Court have the authority to make recommendations and the Commission can facilitate friendly settlements. They may also issue judgments. When they perform these functions, the Commission and the Court contribute to justice in at least three ways: by obligating a state to investigate a violation and punish those responsible; by ordering a state to pay monetary or symbolic reparations; or by ordering the implementation of appropriate legislative, administrative or other reforms to eradicate a practice that has been found to violate human rights. Any of those remedies may constitute a significant achievement, not only for the victims and their families but also for a society more generally. It is important to note also that the Commission and the Court have the authority to issue precautionary or provisional measures for the purpose of safeguarding victims or witnesses.

5.3 Rectifying a General Situation of Human Rights

The Inter-American system also monitors the general situation of human rights on an individual country basis, and with regard to particular categories of rights across the region, such as the rights of women, indigenous peoples, children, migrant workers or in the area of freedom of expression. In that way, the system's institutions also promote human rights on the societal or political level.

As analyzed in Chapters I and II, the Commission has the authority to prepare reports about the general human rights situation in particular countries, and, with the permission of the state, to conduct *in loco* visits for the purpose of studying a particular situation. The active, coordinated and strategic participation of civil society is critical in this context, since NGOs may have a tremendous influence on the decision to conduct an *in loco* visit, on the Commission's schedule or activities during a visit, and on the content of the report the Commission produces after a visit. And these interventions may, in turn, have an important impact on the general human rights environment prevailing in a particular country.

The experience gained since the 1970s demonstrates that through the use of its monitoring powers, the Commission may create a dynamic that strengthens the efforts of civil society to put an end to a generalized situation of human rights violations. As explained in Chapter II, the mere presence of the Commission in a country may generate more intense debate about that country's human rights situation, and frequently the victims of human rights violations may take advantage of the Commission's presence to denounce individual violations. A report on the Commission's visit to a particular country may also intensify pressure on that country to improve its human rights practices.

Such was the experience, analyzed in Chapter II, when a Commission report, published after the Commission's *in loco* visit to Argentina, put an end to enforced disappearances in Argentina. A Commission report on Mexico, drafted after a visit to that country by the Rapporteur on the Rights of Women, led Mexico to establish new mechanisms to address the generalized situation of impunity for violence against women. And following a 1979 Commission report on the situation in Nicaragua, which concluded that the government of Nicaragua had violated human rights in a grave, persistent and generalized manner, the Consultation of Foreign Ministers, a political body of the OAS, called for the immediate and definitive replacement of the Nicaraguan regime of Anastasio Somoza. Somoza ceded power just a few weeks later.

5.4 Strengthening the Rule of Law

The value of the Inter-American system derives finally from the fact that when a case is pursued within the system, the final resolution offers not only the possibility of repairing damages suffered by those directly affected in the case, but also the additional possibility of promoting legislative reforms to limit additional abuses in the country, or in the region more generally. Although states, upon ratification of the American Convention or other human rights treaties, commit themselves to bringing their internal legislation into conformity with the norms of the Inter-American system, in reality all states maintain laws that are incompatible with international human rights standards. And these laws may be addressed by the Inter-American system when considering individual cases.

Experience with military regimes in the region indicates that the full protection of human rights depends on the functioning of legal institutions. For that reason, the strengthening of legal institutions constitutes an important task for civil society, and a point of inquiry for the Inter-American system. One strategy open to NGOs involves advocacy before national political institutions, with the purpose of achieving approval for legislative initiatives that guarantee human rights. A second strategy, analyzed in Chapter IV, involves the use of treaties in litigation at the local level.

Litigating a case before the Inter-American system may also be an effective strategy to strengthen the rule of law, because decisions from the Inter-American system serve not only to demand human rights in individual cases, but may also lead to reforms at the local level as a form of reparation. Chapter IV explained how the Commission and the Court have promoted legislative reforms by means of recommendations, friendly settlements, agreements signed without friendly settlements, and judgments obligating states to modify or annul internal legislation related to marriage, freedom of expression, slave labor, treason, terrorism, or the rights of indigenous peoples. In all of those cases, the decisions of the Commission or the Court paved the way for changes at the local level that would not have been feasible through a national legislative process.

5.5 The Decision to Use the System

This Chapter concludes with some practical observations that may be relevant to any organization when considering when or how to use the Inter-American system. The value of the Inter-American system should be measured by its potential to obtain justice in individual cases, rectify a general pattern of human rights violations, and strengthen the rule of law. The cases examined in this Guide also demonstrate the growing potential of the Inter-American system. It functions as a supra-national forum for demanding human rights when other avenues of justice have been closed, especially when domestic remedies have been exhausted or denied, or when the general human rights situation has become so grave as to require monitoring by the Inter-American system.

NGOs themselves must define their core mission, the overall strategy they will implement, and the specific activities they will undertake. Advocacy before the political bodies of the Inter-American system, or direct litigation before the Commission or the Court, may figure into an effective overall strategy. But the decision to use these regional mechanisms must also depend, among other factors, on the human rights situation in the country, the possibility of success or social movement given the country's particular legal or political context, and, above all, the financial and human resources of the NGO itself. The use of the Inter-American system is one option among many other advocacy options. And as with any other strategy, advocacy within the Inter-American system, especially litigation before the Commission and the Court, is not without its own costs in terms of time, expenditures, and the opportunities that may be lost by diverting scarce resources away from other organizational priorities or activities.

Prior to bringing a case before the Inter-American system, NGOs should consider how expensive and onerous the process can be. The preparation of a petition in itself demands an enormous effort. Because petitioners carry the burden of proof in these cases, NGOs must compile significant evidence about the issue or situation they are denouncing, and provide detailed information about the place and date of the violation, the name of the victim, and information about any public official that has become aware of the matter. And because NGOs must also overcome all admissibility requirements, they must prepare additional information about the efforts made to exhaust domestic remedies. Given the particular importance of actual hearings in the development of a case, NGOs must also incur travel costs to attend hearings in Washington, the seat of the Commission, or San Jose, the seat of the Court. And because the processes before the Commission and later the Court may normally last for years, NGOs must be prepared to sustain such efforts over a prolonged period of time.

For these reasons, before bringing a case before the Commission, NGOs should make every effort to achieve justice before national courts. If it is necessary to denounce a violation before the Inter-American system, NGOs should evaluate not only the factual and legal merits of the case, but also the extent to which the case represents or highlights general human rights problems. That is to say, NGOs should select model cases that could have a significant impact on the internal situation within a specific locality or country—or in the region as a whole.

There is much potential within the Inter-American system to obtain justice, spotlight grave human rights abuses, and strengthening the rule of law. Civil society organizations throughout the Americas should give careful consideration to the strategic use of the system to broaden their own capacity to take action in defense of human rights.

Appendix I

INTERNET DATABASES CONTAINING INTERNATIONAL INSTRUMENTS AND JURISPRUDENCE

Organization of American States Website: www.oas.org

Inter-American Commission on Human Rights:
<http://www.cidh.oas.org/Default.htm>

Inter-American Court of Human Rights:
<http://www.corteidh.or.cr/index.html>

Mirror site of the Court:
<http://www.wcl.american.edu/humright/hracademy/corteidh/>

List of States that have ratified the Inter-American Convention:
<http://www.cidh.org/basicos/basic4.htm>

Inter-American Human Rights Database: <http://www.wcl.american.edu/pub/humright/digest/Inter-American/indexesp.html>

Inter-American Human Rights Digest:
<http://www.wcl.american.edu/humright/repertorio/>

Database of Human Rights Treaty Bodies of the UN:
<http://www.unhchr.ch/tbs/doc.nsf>

European Court of Human Rights:
<http://www.echr.coe.int/>

Database of SIM-University of Utrecht, Netherlands (Human Rights Committee, the Committee Against Torture and the Committee on the Elimination of Racial Discrimination, and the European Court of Human Rights): <http://sim.law.uu.nl/SIM/Dochohome.nsf?Open>

University of Minnesota Human Rights Library:
<http://www1.umn.edu/humanrts/index.html>

Appendix II

The Organization of American States (OAS)*

General Secretariat of the Organization of American States
17th St. and Constitution Ave., NW
Washington, D.C., 20006
Telephone Switchboard: (202) 458-3000
Main OAS Telefax: (202) 458-3967
Website: www.oas.org

Secretary General
Dr. César Gaviria
17th St. and Constitution Ave.,
N.W. Room 20, Washington,
D.C. 20006
Telephone: (202) 458 6836

Assistant Secretary General
Ambassador Luigi R. Einaudi
17th St. and Constitution Ave.,
N.W. Room 2,
Washington, D.C. 20006
Telephone: (202) 458-6046

Main Building (MNB)
17th Street & Constitution Ave., N.W.
Washington, D.C. 20006, USA

General Services Building (GSB)
1889 F Street, N.W.
Washington, D.C. 20006, USA

Administrative Building (ADM)
19th Street & Constitution Ave., N.W.
Washington, D.C. 20006, USA

The Inter-American Commission of Human Rights (IACHR)*

Inter-American Commission on Human Rights
1889 F Street, N.W.
Washington, D.C., 20006
U.S.A.
Website:
<http://www.cidh.oas.org/Default.htm>

Chairman :
Dr. José Zalaquett
1889 F St., N.W., 5th floor ,
No.588-A,
Washington, DC 20006
Telephone: (202) 458-6002

The Inter-American Court of Human Rights (IACtHR)*

President :
Dr. Sergio Garcia Ramirez
Apartado Postal 6906 - 1000
San José, Costa Rica
Telephone: (506) 234-0581
Telefax: (506) 234-0584
Website:
<http://www.corteidh.or.cr/index.html>

Secretary :
Lic. Pablo Saavedra
Apartado Postal 6906 - 1000,
San José, Costa Rica
Telephone: (506) 234-0581
Telefax: (506) 234-0584

*As of March 2004.

Appendix III

LIST OF RAPPORTEURSHIPS AT THE INTER-AMERICAN COMMISSION OF HUMAN RIGHTS

The Rapporteurships are appointed by the Inter-American Commission of Human Rights and are divided into two categories:

THEMATIC

- Rights of indigenous peoples
- Rights of women
- Rights of migrant workers and their families
- Rights of persons deprived of their freedom
- Rights of the child

COUNTRY SPECIFIC

Antigua	Argentina	Bahamas Barbados
Barbados	Belize	Bolivia
Brazil	Canada	Chile
Colombia	Costa Rica	Cuba
Dominican Republic	El Salvador	Ecuador
Grenada	Guatemala	Guyana
Haiti	Honduras	Jamaica
Mexico	Nicaragua	Paraguay
Panama	Peru	St. Kitts & Nevis
St. Lucia	St. Vincent & the Grenadines	Suriname
Trinidad & Tobago	United States	Uruguay
Venezuela		

For more information, contact the Inter-American Commission on Human Rights:

1889 F St., N.W., 5th Floor,
No. 588-A,
Washington, D.C. 20006
Tel: (202) 458-6002
Website: <http://www.cidh.oas.org/Default.htm>

Appendix IV

Outline for a Letter to the Commission

[Date]

[Name]

Executive Secretary
Inter-American Commission on Human Rights
Washington, DC

Dear **[Name]**,

On behalf of **[Name of NGO]**, and as required under Article 64 of the Regulations of the Inter-American Commission, I write to request that the Inter-American Commission hold a hearing during its **[Number]** session to examine **[Issue]**.

[Include a paragraph explaining why the issue is important; how it impacts human rights; and what your hearing will present]. Upon confirmation of our request for this hearing, we will provide your office with the names of our expert panelists.

[Reaffirm the importance of the issue]. We earnestly await a satisfactory response to our request for a hearing.

Respectfully,

[Your Name]

[Your Title]

Appendix V

Sample Letter to the Commission

January 8, 2003

Dr. Santiago Canton
Executive Secretary
Inter-American Commission on Human Rights
Washington, DC

Dear Dr. Canton,

On behalf of the International Human Rights Law Group^{*}, and as required under Article 64 of the Regulations of the Inter American Commission, I write to request that the Inter-American Commission hold a hearing during its 116th session to examine the effects of racial discrimination in the United States of America.

An analysis of racial patterns in residential demographics is critical to understanding the current manifestations of racism in the United States. These racial patterns have a direct impact on access to and quality of public services, particularly elementary through tertiary education, creating serious inequalities and violations of human rights. The Law Group proposes to present expert analysis of racial patterns in urban and residential planning in the United States and the implications for human rights protection in communities of color. Upon confirmation of our request for this hearing, we will provide your office with the names of our expert panelists.

I strongly believe that dialogue between experts on racism in the United States and Members of the Inter-American Commission on Human Rights will contribute to the creation of the most appropriate mechanisms to protect and promote human rights in the United States. We earnestly await a satisfactory response to our request for a hearing.

Respectfully,

Gay J. McDougall
Executive Director

^{*} The International Human Rights Law Group formally changed its name to Global Rights: Partners for Justice in December 2003.

Appendix VI

Human Rights: How to Present Petitions in the Inter-American System*

*** We would like to express our appreciation to the Inter-American Commission on Human Rights of the Organization of American States for allowing us to reproduce *Human Rights, How to present petitions in the Inter-American system*.**

Appendix VII

Guidelines for the Participation of Civil Society Organizations in OAS Activities

NOTES

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- ¹ <http://www.oas.org>
- ² <http://www.oas.org/juridico/english/charter.html>
- ³ <http://www.corteidh.or.cr/index-ingles.html>
- ⁴ http://www.iin.oas.org/default_ingles.htm
- ⁵ <http://www.cidh.org>
- ⁶ <http://www.oas.org/consejo>
- ⁷ <http://www.oas.org/XXXIVGA/english/>
- ⁸ <http://www.oas.org/consejo/CAJP/>
- ⁹ <http://www.oas.org/cim/>
- ¹⁰ <http://www.ini.gob.mx/iii>
- ¹¹ http://www.iin.oea.org/default_ingles.htm
- ¹² <http://www.upd.oas.org>
- ¹³ http://www.oas.org/cji/eng/inter_american_juridical_committee.htm
- ¹⁴ <http://www.oas.org/juridico/english/Treaties/b-32.htm>
- ¹⁵ <http://www.worldpolicy.org/globalrights/treaties/achr-esc.html>
- ¹⁶ <http://www.oas.org/juridico/english/ga-Res98/Eres1591.htm>
- ¹⁷ <http://www.oas.org/juridico/english/Treaties/a-51.html>
- ¹⁸ <http://www.oas.org/juridico/english/Treaties/a-53.html>
- ¹⁹ <http://www.oas.org/juridico/english/Treaties/a-60.html>
- ²⁰ <http://www.oas.org/CIM/english/Convention%20Violence%20Against%20Women.htm>
- ²¹ <http://www.oas.org/juridico/english/ga-res98/eres1564.htm>
- ²² <http://www.cidh.org/Basicos/basic15.htm>
- ²³ <http://www.cidh.org/Basicos/basic16.htm>
- ²⁴ As of 2004 these status included Argentina, Barbados, Bolivia, Brazil, Colombia, Costa Rica, Chile, Dominican Republic, El Salvador, Ecuador, Guatemala, Haiti, Honduras, Mexico, Nicaragua, Panama, Paraguay, Peru, Suriname, Uruguay and Venezuela.
- ²⁵ <http://www.un.org/>
- ²⁶ <http://www.desaparecidos.org/fedefam/eng.html>
- ²⁷ <http://www.globalrights.org>
- ²⁸ <http://www.amnesty.org>
- ²⁹ <http://www.icj.org/>
- ³⁰ OEA/SER.G,CP/RES 759 (1217/99)(15 Dec.99).
- ³¹ <http://www.oas.org/consejo/resolutions/res840.htm>
- ³² Jackman, Oliver. The Caribbean and the Inter-American Human Rights System. Proceedings of a Seminar on the Inter-American Human Rights Protection System Towards the 21st Century. P.107.
- ³³ Op.cit. 109.
- ³⁴ Inter-American Commission on Human Rights, Annual Report 1999.
- ³⁵ For this information please contact the Secretariat of the Commission.
- ³⁶ <http://www.oas.org/juridico/english/Treaties/a-60.html>
- ³⁷ For this information contact the Commission.
- ³⁸ For a list of Rapporteurs see website: <http://www.cidh.oas.org/relatorias.eng.htm>

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- ³⁹ Center for Justice and International Law (CEJIL), Annual Report 2001, p.43.
- ⁴⁰ Inter-American Commission on Human Rights (IACHR). Annual Report 2002.
- ⁴¹ Translator's note: *Amparo* is a summary proceeding that serves to guarantee constitutional rights.
- ⁴² http://www.science.oas.org/english/Que_plan1.1.htm
- ⁴³ Maria Eugenia Morales De Sierra v. Guatemala, Case 11.625, Report N° 28/98, Inter-Am. C. H. R., OEA/Ser.L/V/II.95 Doc. 7 rev. at 144 (1997)
- ⁴⁴ <http://www.un.org/womenwatch/daw/cedaw/>
- ⁴⁵ Verbitsky v. Argentina, Case 11.012, Informe No. 22/94, Inter-Am.C.H.R., OEA/Ser.L/V/II.88 rev.1 Doc. 9 at 40 (1995).
- ⁴⁶ Translator's note: *desacato* means contempt; in this case it refers to speech offensive to public authorities.
- ⁴⁷ Carmelo Soria Espinoza v. Chile, Case 11.725, Report N° 19/03, Inter.-Am. C. H. R. (2003).
- ⁴⁸ <http://www.indianlaw.org>