

FACING THE CHALLENGE: THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS' ADOPTION OF NEW RULES OF PROCEDURE

BY ARIEL E. DULITZKY AND ISMENE N. ZARIFIS*

The Inter-American system on the protection of human rights is currently undergoing a process of reform. This reform significantly affects the work of the two principal human rights bodies within the system: the Inter-American Commission on Human Rights (hereinafter "the Commission") and the Inter-American Court on Human Rights (hereinafter "the Court") of the Organization of American States (hereinafter "the OAS").¹

The Inter-American system has made many achievements in the promotion and defense of human rights in the region in its fifty years of existence pursuant to the 1948 adoption of the American Declaration of Rights and Duties of Man (hereinafter «the Declaration»)². The system played a protagonistic role during a period dominated by authoritarian regimes in which it identified and denounced grave and systematic human rights violations.³ Its presence in the region facilitated a broadening of political space for civil society to exercise its rights and to

* Ariel E. Dulitzky (b. 1967), LL.M. (Harvard), is Principal Specialist in Human Rights at the Inter-American Commission on Human Rights. Email: ADulitzky@oas.org. Ismene N. Zarifis (b. 1974) is J.D. candidate at the American University, Washington College of Law and was Equal Justice Fellow with the Inter-American Commission on Human Rights, June–July, 2002. Email: izarifis@aol.com. The opinions expressed in this article are of those of the authors and do not represent those of the Inter-American Commission on Human Rights, the General Secretariat, the Organization of American States, their organs or staff.

¹ The Organization of American States (OAS) is an international organization created by the American states to establish peace and justice, promote member states' solidarity, and defend their sovereignty, their territorial integrity and independence within the Americas (Art. I, OAS Charter Article 1). Other human rights-related organs and units exist within the OAS, such as: the Unit for the Promotion of Democracy, the Inter-American Commission on Women, the Inter-American Indian Institute, the Inter-American Juridical Committee and the Inter-American Children's Institute. Nevertheless, only the Commission and the Inter-American Court have the principal and exclusive function of defending human rights. Only they are consequently considered here.

² The origin of the Inter-American system is found in the American Declaration of Rights and Duties of Man, adopted in Bogotá May 1948 at the IXth International Conference of American States. See Scott Davidson: *The Inter-American Human Rights System* (Ashgate: Aldershot Dartmouth 1997) 11.

³ Cecilia Medina: *The Battle of Human Rights. Gross, Systematic Violations and the Inter-American System* (The Hague: Martinus Nijhoff Publishers 1988).

conduct its activities openly.⁴ The Commission's 1979 report on the human rights situation in Argentina is one example of the Inter-American system's paradigmatic role in the region.⁵

With the arrival of democratically elected governments, the human rights situation in Latin America made considerable progress. Unlike in past years, the majority of countries do not have policies of committing serious violations, either planned or supported by the State. At the same time, many States are determined to improve the human rights situation at the domestic level, by pushing for legislative reforms, promoting education campaigns, and training members of the armed and police forces. Nevertheless, the situation is far from ideal. Violence by police forces, corruption and inefficiency of the judiciary, discrimination against vast sectors of society, poverty and inequality in the distribution of wealth, and high crime rates are common traits shared by most countries in the region.⁶

The Inter-American system has attempted to respond to the transformation in the human rights situation in the region, by adapting its own practices and procedures. In particular, the system's focus has changed from conducting on-site visits to specific countries and the publication of general reports on human rights in those countries, to a predominantly case-based system of reviewing petitions and admitting those which characterize violations of the Declaration, the American Convention on Human Rights (hereinafter «the Convention»),⁷ or other relevant documents. However, this recent practice of processing individual cases was not reflected in the former Rules of Procedure of the Commission, which were last integrally amended in 1980. This prompted the Commission to initiate a lengthy and comprehensive reform process that culminated in the adoption of the new Rules of Procedure in December 2000 (hereinafter «the Rules» or «the Rules of Procedure»⁸).

This article analyzes the principal reforms introduced in the new Rules of Procedure of the Commission and its potential impact on the Inter-American system of human rights. Prior to the substantive analysis of the new Rules, it is first important to understand the overall structure and function of the Commission.

⁴ Antonio Cançado Trindade: «El sistema interamericano de protección de los derechos humanos (1948-1995): Estado actual y perspectivas,» in Bardonnnet and Cançado Trindade (eds.): *Derecho Internacional y derechos humanos* (The Hague/San José: Internacional Academy of the Hague/IIDH 1996).

⁵ David Weissbrodt and Maria Luisa Bartolomei: «The Effectiveness of International Human Rights Pressures: The Case of Argentina, 1976-1983» (1991) 75 *Minnesota Law Review* 1009.

⁶ See as example, Human Rights Watch, *World Report 2001*, New York, noting amongst other things, political violence and corruption, the inefficiency of the judiciary, restrictions of due process, the inhumane prison conditions are common characteristics in the region.

⁷ American Convention On Human Rights, Signed at the Inter-American Specialized Conference on Human Rights, San José, Costa Rica, 22 November 1969, reprinted in *Basic Documents Pertaining to Human Rights the Inter-American System*, OEA/Ser.L/V/II.4 rev. 8 (May 22, 2001) and at <http://www.cidh.oas.org/Basicos/basic3.htm>.

⁸ Rules of Procedure of the Inter-American Commission on Human Rights (approved by the Commission at its 109th special session held December 4-8, 2000), reprinted in *Basic Documents Pertaining to Human Rights the Inter-American System*, OEA/Ser.L/V/II.4 rev. 8 (May 22, 2001), also available at <http://www.cidh.oas.org/Basicos/basic16.htm>.

The Inter-American structure of the OAS mechanisms for the organs: the Commission region are the Convention States who have not

The Commission capacities. They are tion of the Commission once thereafter. The elected once thereafter Court generally hold of which last approach headquarters office in San José, Costa Rica

The Commission tive body by the legal ter, the Convention, t created in 1959 and

⁹ For more details gential et al (eds.): *La* 1990), 31-55; Antonio Davidson, op.cit., at 1

¹⁰ The 25 states th Brazil, Chile, Colombi Guatemala, Haiti, Hon dad and Tobago, Uruguay 1998 when the Court s Convention, the denou treaty and all the huma the Court (the Conven Antigua and Barbuda, Vincent and the Grena Convention, but its O/A accepted the contentic Ecuador, El Salvador, Trinidad and Tobago,

¹¹ Convention Ar with respect to the Co

¹² The Commissi

A. THE COMMISSION AND COURT: AN OVERVIEW

The Inter-American system for the protection of human rights has been developed within the structure of the OAS within the last fifty years, replicating both the universal and European mechanisms for the protection of human rights. The system is mainly comprised of two organs: the Commission and the Court.⁹ The two principal human rights instrument for the region are the Convention, for those States who have ratified it, and the Declaration, for those States who have not ratified the Convention.¹⁰

The Commission and the Court each consist of seven experts acting in their individual capacities. They are nominated and elected by State parties to the Convention and the duration of the Commissioner's mandate is four years with the possibility of being re-elected once thereafter. The members of the Court have six-year mandates and are also able to be re-elected once thereafter.¹¹ All members' positions are part-time. The Commission and the Court generally hold two or three ordinary sessions annually in their respective locales, each of which last approximately three weeks. The Commission holds ordinary sessions at its headquarters office in Washington, D.C., U.S.A. The Court holds sessions on its premises in San José, Costa Rica.

The Commission and the Court function pursuant to the powers delegated to each respective body by the legal instruments within the Inter-American system, such as the OAS Charter, the Convention, the Commission's Statute, and the Court's Statute.¹² The Commission was created in 1959 and operated during twenty years as the only organ of the OAS with a mission

⁹ For more details on the history of the evolution of the Inter-American system, see Thomas Buerghenthal et al (eds.): *La protección de los derechos humanos en las Américas* (Madrid: IIDH-Civitas 1990), 31-55; Antonio A. Cançado Trindade; op.cit.; Cecilia Medina, op.cit., at 67-98, and Scott Davidson, op.cit., at 1-36.

¹⁰ The 25 states that have ratified the American Convention are: Argentina, Barbados, Bolivia, Brazil, Chile, Colombia, Costa Rica, Dominica, Dominican Republic, Ecuador, El Salvador, Grenada, Guatemala, Haiti, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, Suriname, Trinidad and Tobago, Uruguay, and Venezuela. Trinidad and Tobago denounced the Convention in May of 1998 when the Court sent the first request for provisional measures to the State. In accordance with the Convention, the denouncement of the treaty takes effect one year after the act of denouncing the treaty and all the human rights violations occurring before this date, are subject to the jurisdiction of the Court (the Convention Article 78). Nine OAS member states have not ratified the Convention: Antigua and Barbuda, the Bahamas, Belize, Canada, Guyana, St. Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, and the U.S.A. Cuba is the tenth State not to have ratified the American Convention, but its OAS membership has been suspended since 1962. Seventeen countries have accepted the contentious jurisdiction of the Court: Argentina, Bolivia, Chile, Colombia, Costa Rica, Ecuador, El Salvador, Guatemala, Honduras, Mexico, Nicaragua, Panama, Paraguay, Peru, Suriname, Trinidad and Tobago, Uruguay, and Venezuela.

¹¹ Convention Articles 34, 36 and 37 with respect to the Commission and Articles 52, 53 and 54 with respect to the Court.

¹² The Commission's and Court's Statutes are found at <http://www.cidh.oas.org/basic.eng.htm>.

to promote and defend human rights. The Court was established in 1979, at the time the Convention entered into effect.

The Commission operates according to the powers delegated to it in the OAS Charter Article 106, its statute and the Rules.¹³ These instruments grant the Commission jurisdiction over all OAS Member States. Accordingly, it supervises the States' compliance with the Convention for those States that had ratified it or the Declaration, which the Commission and the Court consider legally binding on the States.¹⁴ In relation to State parties to the Convention, the Commission acts in accordance with the specific powers granted it by the Convention in Article 41.

1. THE CONVENTION AND OTHER HUMAN RIGHTS INSTRUMENTS

The Convention grants supervisory authority over states to the Commission and the Court, based on the European human rights system prior to the latter's system's implementation of Protocol 11.¹⁵

In addition, both the Commission and the Court hold supervisory authority over State party obligations under conventions and protocols that have come into effect in the region after the Convention. Examples of other Inter-American instruments assigning the organs with additional supervisory tasks include the Inter-American Convention on Forced Disappearance of Persons, and the Inter-American Convention to Prevent and Punish Torture and the Convention on the Prevention, Punishment and Eradication of Violence against Women. In many instances, cases coming before the Commission cite more than one violation under the Convention and the aforementioned human rights documents. In the case of *Anstrau Villagran Morales et al. v. Guatemala*, where five street youths were extrajudicially murdered by Guatemalan police forces, the Court found violations of the right to life, right to humane treatment, right to personal liberty, right to a fair trial, right of the child and the right to judicial protection under the Convention.¹⁶ The Court further found violations of Guatemala's duty to prevent and punish torture (Articles 1, 6, and 8) under the Inter-American Convention to Prevent and Punish Torture.

¹³ Convention Article 106: «There shall be an Inter-American Commission on Human Rights, whose principal function shall be to promote the observance and protection of human rights and to serve as a consultative organ of the Organization in these matters.»

¹⁴ See Buergethal, *op. cit.*, at 43. See also Inter-American Court of Human Rights, Advisory Opinion OC-10/89, *Interpretation of the American Declaration of the Rights and Duties of Man Within the Framework of Article 64 of the American Convention on Human Rights*, July 14, 1989, Ser. A. No. 10 (1989), paras. 35–45. See also Commission cases: IACHR, *James Terry Roach and Jay Pinkerton v. United States*, Case 9647, Res. 3/87, September 22, 1987, Annual Report 1986–1987, paras. 46–49; *Rafael Ferrer-Mazorra et al. v. United States*, Report No 51/01, Case 9903, April 4, 2001. See further Article 20 of the Statute of the Inter-American Commission on Human Rights.

¹⁵ Protocol 11 to the European Convention created a permanent European Court on Human Rights, *inter alia* abolishing the European Commission on Human Rights.

¹⁶ 1/A Court H.R., *The "Street Children" Case. (Villagrán Morales et al.)*, judgment of November 19, 1999. See Ismene Zarifis: "Guatemala: Children's Rights Case Wins Judgment at Inter-American Court of Human Rights" (2000) 9 *Human Rights Brief* 22.

The procedure of evaluation of the facts and the existence of a violation of the provisions of the Convention may then be decided that the membership Commission may publish determination on State including a list of records to the OAS General that is presented to the

The Court is a judicial jurisdiction is grounded Convention, which stipulate a case to the Court Articles 48 and 50. A limitation procedure before

Once the procedure information to the Court case to the Court as long as may accept the jurisdiction of the court of

The Convention / access to the Court an Court allow petitioner State party introduce a writ, "the Court shall claim that was violate

For a detailed description into the Court in 1979 and Hector Padilla Human Rights Aspects Involvement

See Convention / mission and the complete Article 50 (in the preparatory negotiation)

2. INDIVIDUAL PETITION PROCESS BEFORE THE COMMISSION

The procedure of evaluating individual petitions begins with the Commission. After hearing an account of the facts by the State and the petitioner, respectively, the Commission must establish the existence or absence of the State's international responsibility for the violation of any of the provisions of the Convention or other relevant instruments. Based on this decision, the Commission may then send the case to the Court to obtain a binding judicial opinion, provided that the incumbent State has accepted the compulsory jurisdiction of the Court, or the Commission may publish a final report. The final report contains the Commission's final determination on State responsibility for violations of the relevant instruments. The report, including a list of recommendations for reparations to be awarded to the petitioner, is presented to the OAS General Assembly. The report is included in the Commission's Annual Report that is presented to the OAS General Assembly.¹⁷

3. PROCEDURE BEFORE THE COURT

The Court is a judicial organ with contentious and consultative jurisdiction.¹⁸ The contentious jurisdiction is grounded in its capacity to resolve cases pursuant to Articles 61 and 51 of the Convention, which stipulate that only State parties and the Commission have the right to submit a case to the Court and that in order for the Court to hear a case, it requires compliance with Articles 48 and 50.¹⁹ A case must have passed through all the stages of the Commission evaluation procedure before the Court can examine it.

Once the procedure before the Commission is exhausted and the deadlines for submitting information to the Convention are complied with, the Commission or the State may submit the case to the Court as long as the State in question has accepted the jurisdiction of the Court. States may accept the jurisdiction of the Court in two ways: they may accept the permanent jurisdiction of the court or may accept jurisdiction of the Court only for a specific case.

The Convention Article 61 implies that individual persons by themselves do not have access to the Court and cannot submit cases to the Court. Nevertheless, the new rules of the Court allow petitioners individual representation before the Court, once the Commission or a State party introduces the case to the Court. If the Court decides that a Convention violation exists, "the Court shall rule that the injured party be ensured the enjoyment of his right or freedom that was violated." (Article 63(1)). The Court may also order remedies in the form of

¹⁷ For a detailed descriptions of the procedure before the Commission, consult Monica Pinto: *La Denuncia ante la Comisión Interamericana de Derechos Humanos* (Buenos Aires: Editores del Puerto, 1993) and Hector Faúndez Ledesma: *El Sistema Interamericano de Protección de los Derechos Humanos, Aspectos Institucionales y Procesales* (San José: IIDH 1996).

¹⁸ See Faúndez, *op.cit.*, and Scott Davidson, *op.cit.* for descriptions of the procedure before the Court.

¹⁹ See Convention Article 48 (on the proper procedure for presenting petitions before the Commission and the complete procedure of evaluating petitions and pronouncing their admissibility) and Article 50 (on the preparation of a report with recommendations following an unsuccessful friendly settlement negotiation).

compensation as a result of damages incurred from the violation or by the situation that threatened the victim's rights. In short, Article 63 of the Convention authorizes the opening of the reparations phase before the Court.

The advisory function of the Court refers to its capacity to interpret the Convention and other international human rights instruments by issuing "advisory opinions" on specific issues in international human rights. The Court may according to Article 64 of the Convention be consulted by any of the OAS member States and the organs enumerated in Chapter X of the OAS Charter. This procedure was used frequently during the early years of the Court's existence. So far, the Court has issued seventeen advisory opinions.²⁰

This procedure allowed the Court to establish legal standards on issues such as: the Court's own authority, the limits of State actions, discrimination, the appropriate consultative role it should play, specific themes that are crucial to the effective protection of human rights, such as the writ of habeas corpus, the scope of judicial guarantees, the death penalty, State responsibility and the compatibility of national amnesty laws with the spirit and meaning of the Convention.

B. THE REFORM OF THE RULES IN CONTEXT

The late 1980s and early 1990s marked a period in South and Central America of a transition to democracy, free and regular elections, the end of internal armed conflicts and particularly the end of official policies of committing massive and serious human rights abuses. These new trends presented challenges and concerns for States and human rights defenders as much as for the Inter-American system's organs charged with supervising the respect for human rights in the region. Instead of having to confront military dictatorships or internal armed conflicts, the challenge in the region became the construction of true democratic societies.

In this context, the Inter-American system has undergone a profound change in its functioning within the past two decades. The Commission, which once mainly carried out on site visits and published human rights reports on specific countries in the region, now concentrates more on the individual complaint procedure. Where in the past, gross and systematic human rights violations were a practice of governments, general human rights reports condemning such practices were in order. Now that the number of violations has decreased in respect to past figures, it appears that a focus on individual petitions conforms to the change in human rights practices of State party governments. At the same time, the new practice is believed to allow the Commission and Court to address and prevent human rights violations by issuing authoritative determinations.

Although the Commission's new focus on receiving individual petitions was not reflected in its former regulations, the Commission continued to function according to the old rules adopted in 1980. This situation presented difficulties for the proper handling of the individu-

²⁰The most recent are: The right to information on consular assistance. In the framework of the Guarantees of the due process of law, Advisory Opinion OC-16/99 of October 1, 1999 and Legal Condition and Human Rights of the Children, Advisory Opinion OC-17/02 of August 28, 2002.

al compl
tes, the p
In th
that the
the Inter
many of
dure and
more ap
gested t
rights.

Att
ling for
tem as r
dures."²²

In r
ad cons
sidered
opinion
society,
ten Stat

Wi
ted Res
the Cor
the res
Proced
recomr

- a. To d
- b. To r
- sepa
- the j
- c. To r
- ly as
- ned
- min
- d. To C
- suc
- e. To c
- a St
- a ca

21

Rights,
at <htt

al complaints by the Commission and caused uncertainty and dissent among the member States, the petitioners and human rights NGOs.

In the mid-1990s, the Mexican and Peruvian governments, in particular, began to argue that the resurgence of democratic governments in many countries in the region suggests that the Inter-American system undergo a re-organization of its mission and role by abandoning many of its human rights protection mechanisms (especially the individual complaint procedure and the preparation of situation report on human rights in different countries) which are more appropriately applicable against authoritarian regimes. Instead, these governments suggested the Commission dedicate itself primarily to the promotion of international human rights.

At the General Assembly held in Panama in June 1996 the OAS approved a resolution calling for the "evaluation of the system's functions with the goal to improve and reform the system as needed, including the corresponding legal instruments, the methods and work procedures."²¹

In response to those concerns and initiatives, the Commission initiated a lengthy and broad consultative process with the aim to reform its Rules of Procedure. The Commission considered proposals presented during the next several General Assemblies, and requested the opinion of OAS member States, non-governmental organizations and other members of civil society, including independent experts in the field. The Commission received comments from ten States and more than one hundred NGOs.

Within this same context of evaluation and reflection, the OAS General Assembly adopted Resolution 1701 when it met in Windsor, Canada in 2000. In light of the request made by the Commission to governments for their ideas and suggestions on the reform of the system, the resolution set forth recommendations to the Commission for the reform of its Rules of Procedure, and in particular, the individual complaint procedure. Specifically, the States recommended to the Commission:

- a. To define the criteria it follows for the opening of cases;
- b. To resolve questions pertaining to the admissibility of individual petitions by opening a separate, mandatory procedure and issuing their findings by way of concise resolutions, the publication of which shall not prejudice the responsibility of the State;
- c. To make all necessary efforts to ensure that individual cases are processed as expeditiously as possible and that each procedural stage, in particular the admissibility phase, is governed by reasonable deadlines; and considering defining the criteria to be followed in determining when a case should be closed because of inaction on the part of the petitioner;
- d. To continue to promote the friendly settlement procedure as a suitable mechanism for the successful resolution of individual cases;
- e. To establish minimum criteria that petitioners must meet in order for the IACHR to request a State to adopt precautionary measures, bearing in mind the circumstances and nature of a case;

²¹ AG/RES. 1404 (XXVI-O/96), Annual Report of the Inter-American Commission on Human Rights, (Resolution adopted at the Eighth Plenary Session, held on June 7, 1996), Article 13, available at <<http://www.oas.org>>.

- f. To define the criteria the Commission follows for referral of cases to the Inter-American Court of Human Rights; and
- g. To establish a frame of reference enabling the Commission to establish a new rapporteur function, define clearly the mandates of such a rapporteur, and appoint an individual to the position.

Finally, during its 109th extraordinary session, the Commission adopted the new set of rules, which entered into effect on May 1, 2001. The Commission adopted the rules pursuant to the authority granted it in the Commission's Statute's Articles 22(2) and 23(1) and Article 39 of the Convention that allows the Commission to develop its own rules of procedure. In drafting the new rules, the Commission took into account all the contributions it had received.

C. A UNIFIED PROCEDURE

This and the following chapters consider the principal changes within the new Rules of Procedure. One first change is the new unified procedure for dealing with human rights violations. As already mentioned, a number of normative "sub-systems" exist simultaneously within the Inter-American system and especially within the Commission's petition process depending on whether the State has ratified the Convention and accepted the contentious jurisdiction of the Court.

One system applies to all the OAS member States that are subject to the Declaration. As the Commission and the Court consider the Declaration is legally binding, the Commission as an organ created by the OAS Charter has the power to monitor the 35 OAS Member States' compliance with the Declaration. This power is expressly established in Article 20 of the Commission's Statute. A second sub-system applies to States that have ratified the Convention on Human Rights. The Convention does not require any special act by the State to enable the Commission to receive individual complaints alleging violations to the Convention. A third sub-system applies to States that have ratified the Convention and accepted the contentious jurisdiction of the Court. Finally, the fourth sub-system refers to the thematic Inter-American treaties addressing the specific rights, groups or situations, such as the Conventions on Torture, Violence against Women and Forced Disappearances.

The former Rules established a slightly different review process of petitions under the Convention from that under the Declaration. The principal difference between the two was the possibility that States subject to the Declaration could request a review procedure of the Commission's findings while the States subject to the Convention did not have this same right.²² There were no references in the old rules for the other regional instruments, there was therefore a lack of specific rules establishing the procedure.

The new Rules unify the procedures substantially by stipulating one review procedure of petitions for violations arising under the Convention, the Declaration, the Additional Protocol

²² See Regulations of the Inter-American Commission on Human Rights, approved by the Commission at its 660th Meeting, 49th Session, held on April 8, 1980, Article 54 Request for Reconsideration. Article 54 was modified by the Commission during its 70th Session, held June–July 1987.

on Human Rights in
Human Rights to Abolish
Punish Torture, the I
the Inter-American
Against Women (Ru

This unification
ding to the Commis
Convention, which
else of rights that a
29(b)), as well as A
include all the viola
reasoning and conc
member States to p
and protect human
prepare reports and
necessary measure
protect human righ
of the Additional I
Rights, articles XII
Persons, and Articl
Eradication of Vio
ve petitions allegir

Consequently,
in the same way, re
the Declaration or
pret with regard to

Thus far, the C
besides the Conve
found violations o
Convention²⁴ or t

²³ See «Other t
OC 1/82, 24 Septen
case), cited above,
Child form part of:
should help this Co
vention Article 19.

²⁴ Report No.
Commission concl
concluded that the
to Prevent and Pun

²⁵ Report No.
Commission foun
and Articles 8 and

on Human Rights in the Area of Social, Economic and Cultural Rights, the Protocol on Human Rights to Abolish the Death Penalty, the Inter-American Convention to Prevent and Punish Torture, the Inter-American Convention on the Forced Disappearance of Persons and the Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women (Rules of Procedure Article 23).

This unification of procedures was made pursuant to conventional instruments and according to the Commission's statute. In particular, the Commission considered Article 29 of the Convention, which sets forth the legal obligation of States not to limit the enjoyment or exercise of rights that are recognized in other conventions to which the State is a party (Article 29(b)), as well as Article 29(d). Likewise the organs of the Inter-American system should include all the violations of human rights treaties ratified by a member State in their judicial reasoning and conclusions.²³ The Commission's Statute allows the Commission to request member States to provide them with information regarding the measures adopted to promote and protect human rights in their respective States. The Commission also has the authority to prepare reports and propose recommendations to member States in order for them to adopt the necessary measures (legislative, constitutional, administrative, and general dispositions) to protect human rights (Commission Statute Article 18 (b), (c) and (d)). Finally, Article 19 (6) of the Additional Protocol on Human Rights in the Area of Social, Economic and Cultural Rights, articles XIII and XIV of the Inter-American Convention on Forced Disappearance of Persons, and Article 12 of the Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women, expressly grant the Commission the power to receive petitions alleging violations of these treaties.

Consequently, the Commission's rules of procedure are designed to evaluate all petitions in the same way, regardless if the allegations are being evaluated according to the Convention, the Declaration or any other instrument that the Commission is mandated to apply and interpret with regard to individual petitions.

Thus far, the Commission has not decided any cases based solely on a regional instrument besides the Convention or the Declaration. There are several cases in which the Commission found violations of both the Convention and another relevant instrument such as the Torture Convention²⁴ or the Convention on Violence against Women.²⁵ Thus, it is still premature to

²³ See «Other treaties, objective of the consultative function of the Court», Consultative Opinion OC 1/82, 24 September 1982; See also Villagran Morales et al. v. Guatemala (the "Street Children" case), cited above, where Court said that both the Convention and the Convention on the Rights of the Child form part of a very comprehensive international corpus juris for the protection of the child that should help this Court establish the content and scope of the general provision established in the Convention Article 19.

²⁴ Report No. 2/99, Case 11.509, Manuel Manriquez v. Mexico, February 23, 1999 (where the Commission concluded that Mexico violated several Convention provisions. The Commission also concluded that the State violated the provisions of Articles 8 and 10 of the Inter-American Convention to Prevent and Punish Torture).

²⁵ Report No. 54/01, Case 12.051, Maria Da Penha Maia Fernandes v. Brazil, April 16, 2001 (the Commission found that the State has violated Article 7 of the Convention on Violence against Women and Articles 8 and 25 of the American Convention).

evaluate the wisdom, impact or consequences of having a single procedure applied to different Conventions.²⁶

D. SEPARATION OF ADMISSIBILITY AND MERITS PHASES

1. ADMISSIBILITY PHASE

Another important change to the Rules involves the separation of the admissibility and merits phases of the petition process. The previous practice was not to issue separate admissibility decisions but only to issue inadmissibility decisions and incorporate the decision on admissibility with the report on the merits.²⁷ The prior procedure of issuing admissibility decisions with the merits report in a particular case was in many ways confusing for the parties and caused uncertainty regarding the Commission's practices in general.²⁸ Only in rare cases would the Commission not decide the admissibility and merits of a case jointly.²⁹ The historical reason for unifying the admissibility and merits of a case may be found in cases characterized by serious and massive human rights violations such as massacres, forced disappearances, and torture in countries where the judicial system was dysfunctional or non-functional at all. Under these circumstances where violations of the Declaration or the Convention were prima facie existent, the formal requirements set forth for the admissibility of petitions were not as crucial.

During the process of evaluation and reflection, it became clear that the Commission needed to become more transparent as regards the admissibility phase. There were many reasons for this. Several States observed the lack of a clear set of criteria to establish the admissibility of petitions. In particular, the requirements for the exhaustion of domestic remedies needed more specificity. At the same time, other States interpreted the lack of a separate admissibility and merits stage to mean that the simple review of a petition, resulting in the "opening of a case" signified a prejudgment and condemnation of the State.

²⁶ In exercising contentious jurisdiction, the Inter-American Court has applied such treaties as the Inter-American Convention to Prevent and Punish Torture or the Inter-American Convention on the Forced Disappearance of Persons to determine the international liability of states in a particular case. See the *Bámaca Velásquez Case*, judgment of November 25, 2000, Series C No. 70, paras. 126 and 157; *Cantoral Benavides Case*, judgment of August 18, 2000, Series C No. 69, paras. 98, 100 and 101; *Villagrán Morales et al. v. Guatemala Case (Street Children" case)*, Judgment of November 19, 1999, Series C No. 63, Chapter XIII; and *Paniagua Morales et al.*, judgment of March 8, 1998, Series C No. 37, para. 133.

²⁷ Christina Cerna: «Introductory Note to the New Rules of Procedure of the Inter-American Commission on Human Rights»(2001) 40 *International Legal Materials* 748.

²⁸ See Veronica Gomez: «Inter-American Commission on Human Rights and the Inter-American Court of Human Rights: New Rules and Recent Cases»(2001) 1 *Human Rights Law Review* 3.

²⁹ See e.g. Annual Report 1995, Report No 10/96, Case 10.636 (Guatemala), March 5, 1996; Annual Report 1993, Report No 28/93, Case 10.675 (United States), October 13, 1993; Annual Report 1987-1988, Resolution No 15/87, Case 9635 (Argentina), June 30, 1987 and Annual Report 1986-1987, Resolution No 30/86, Case 9726 (Panama), September 19, 1986.

Civil soc:
the lack of co
sions depend
rights organi
could prolong

In the mi
separately in
Where the ad
ation on the
method to en

The new
legally comp
the areas tha
the definition

In this c
bility phase.

se now has a
new rules, a
admissibility
merits of the
will file the
ly governed
bility Proce
dure, Exhaust
ons (Article
many requir

The nev
sibility, whi
requirement
ance. Articl
giving the C
dural requir
mission to r
but substan
on that adeq

Article
forwards a j
respond to
receiving th
hin which t
months, in
grant State
requires a v

³⁰ See C

single procedure applied to diffe-

AD MERITS PHASES

tion of the admissibility and merits not to issue separate admissibility incorporate the decision on admissibility of issuing admissibility decisions s confusing for the parties and cau- teral.²⁸ Only in rare cases would the e jointly.²⁹ The historical reason for d in cases characterized by serious rced disappearances, and torture in n-functional at all. Under these cir- vention were prima facie existent, titions were not as crucial. me clear that the Commission nee- ty phase. There were many reasons rteria to establish the admissibility stion of domestic remedies needed d the lack of a separate admissibili- tion, resulting in the "opening of a ate.

Court has applied such treaties as the Inter-American Convention on the liability of states in a particular case. 0, Series C No. 70, paras. 126 and ies C No. 69, paras. 98, 100 and 101; e), Judgment of November 19, 1999, nent of March 8, 1998, Series C No.

Procedure of the Inter-American aterials 748. uman Rights and the Inter-American Human Rights Law Review 3. 36 (Guatemala), March 5, 1996; es), October 13, 1993; Annual Report 0, 1987 and Annual Report 1986- 1986.

3 (2003)

Civil society organizations requested the clarification of the admissibility criteria, noting the lack of consistency in the decisions. The organizations especially noted a variation in decisions depending on what State was implicated in a specific case. At the same time, human rights organizations expressed their concern that a separate admissibility and merits phase could prolong the procedure before the Commission on the whole.

In the mid-1990s the Commission began to decide the admissibility of certain petitions separately in order to encourage the parties to engage in friendly settlement negotiations. Where the admissibility report marked the opening of a case and implied a subsequent evaluation on the merits of the case, the Commission intended to use the admissibility report as a method to encourage States to engage in friendly settlements.

The new political reality in the region was moreover accompanied by the arrival of more legally complex cases, which required a clear set of admissibility requirements. In particular, the areas that required more precision were the development of the concept of the victim and the definition of an adequate domestic remedy.

In this context, the Commission decided to establish a mandatory and separate admissibility phase. The new rules introduce two separate stages: admissibility and merits. Each phase now has an individual decision-making process and dictates its own outcome. Under the new rules, a petition becomes a case when it is formally 'opened' through the adoption of an admissibility report. A decision on admissibility does not constitute a prejudgment as to the merits of the matter. Accordingly, when the Commission declares a petition inadmissible, it will file the petition and will not consider the merits. The admissibility phase is now primarily governed by Requirements for the Consideration of Petitions (Rules Article 28), Admissibility Procedure (Article 30), and Decision on Admissibility (Article 37). In the new procedure, Exhaustion of Domestic Remedies (Article 31), Deadline for the Presentation of Petitions (Article 32), and Duplication of Procedures (Article 33) have maintained most of the primary requirements for receiving petitions from the former procedure.

The new guidelines could arguably place greater restrictions on the standards for admissibility, which in theory expedite the review process. Specifically, Article 28 clarifies the requirements for the submission of petitions and reaffirms a steadfast rule for timely compliance. Article 29 (Initial Processing) has restricted the standards for admissibility further by giving the Commission discretion to decide whether to ask the petitioner to fulfill the procedural requirements. The equivalent provision of the old Rules of Procedure required the Commission to notify the petitioner to complete the omitted procedural requirements. This slight but substantial change indicates that petitioners may have only one chance to present a petition that adequately satisfies Article 28 requirements.

Article 30 sets forth the time line for the consideration of admissibility. The Commission forwards a petition to the State in question immediately after receiving it. The State must now respond to the claim and submit information to the Commission within two months after receiving the petition instead of six months as was previously required. The time period within which the State is required to respond to the complaint was shortened from six to two months, in order to compensate for the extra step in the process.³⁰ The Commission does not grant States extensions beyond one month in addition to the original two months allotted and requires a well-founded request by the State.

³⁰ See Cerna op.cit.

Article 37 requires the Commission to adopt an Admissibility Report, which the Commission publishes in its Annual Report. This provision is important because, as was mentioned, the Commission did not have the practice of adopting independent admissibility reports or publishing all its admissibility decisions. These provisions indicate that the Commission must issue a formal admissibility decision for all petitions forwarded to the State involved, which was not the practice under the old regulations.³¹ The only exception to the rule on separate admissibility and merits phases is stipulated in Article 37(3) which allows the Commission, in exceptional circumstances, to open a case but defer its treatment of admissibility until the discussion and decision on the merits. If the Commission deems the petition admissible, its decision concludes the admissibility phase and initiates the merits phase of the review process.

The Commission recently adopted an important resolution clarifying that the Executive Secretary, and not the Commission meeting in plenary, has responsibility for the study and initial processing of petitions lodged before the Commission. Although it had been the everyday practice of the Commission to place this power with the Secretary, it had never been formally assigned. Thus in some instances the Secretary has the power to make these decisions, particularly not to transmit the petition to the State if it does not meet the requirements of the Rules of Procedure. The adoption of this resolution put this question to rest.³²

2. MERITS PHASE

The merits phase is governed by the Rules of Procedure Article 38 (Procedure on the Merits), Article 39 (Presumption), Article 41 (Friendly Settlement), and Article 42 (Decision on the Merits). Article 38 allows the petitioners to submit additional observations on the merits within two months from the date when the Commission opens the case, that is after the Commission adopts a decision on admissibility. In turn, the State in question must respond to the petitioner's observations also within two months.

The main difference from the earlier regulation is that by clearly dividing the two stages, the Commission now only accepts observations exclusively related to the merits of the petition, in conformity with article 38. In the past however, both parties were required to argue and respond to admissibility and merit arguments at the same time. This provision is silent on whether extensions to present observations are available to the parties. But the practice of the Commission has been to grant the extensions requested by the States.

If the State fails to respond within the two-month limit, Article 39 presumes that the facts submitted by the petitioner are true as long as other evidence does not lead to a different conclusion.³³

³¹ See Gomez *op.cit.*, at 113.

³² IACHR – Inter-American Commission on Human Rights, Resolution on Initial Processing of Petitions, February 27, 2002.

³³ This possibility already existed in the former regulations, see Report No. 13/96, Case 10.948 (El Salvador), March 1, 1996. In determining whether the facts are well founded «the State's failure to appear cannot force the petitioners to meet a standard of evidence equivalent or similar to the one they initially would have had to meet if the Government had appeared» (para. 21). Nevertheless, the petitioners must «establish... the minimum elements of consistency, specificity and credibility in their versi-

The
mation, e
fional ob
dispute o
case base

The
on in a fri
ly settled
the partic
must req
under Ar
this stage
in Article
useful m
areas in t

If the
phase wi
the argu
ons. One
State mu
ons with
and liter

on of the t
allence, th
informati
State "has
fulfillmer
Michel Ri

³⁴ Se
of the par
as an orga

³⁵ In
and an inc
blished th
the new le
Inter-Am
Settlemer
1994. OA

³⁶ In
on Human
Opinion C
tion impli
petitioner

The procedure on the merits allows the petitioner and the State to submit further information, evidence, and arguments. Generally the Commission solicits from both parties additional observations as to the merits of the case, particularly, and in most cases, when there is a dispute of the facts or of the law. In very few instances, if any, has the Commission resolved a case based solely on one presentation by each party.

The Commission considers all information and attempts to engage the consenting parties in a friendly settlement of the dispute. Article 41 has relaxed the requirements for a friendly settlement in that the provision neither requires precision in the positions and allegations of the parties nor demands set dates for collecting evidence or holding hearings.³⁴ The parties must respond as to their willingness to enter into a friendly settlement within a certain period under Article 38, however. If the friendly settlement is successful, the Commission concludes this stage by publishing a report on the solution reached in conformity with the requirements in Article 49 of the Convention. The friendly settlement procedure has become an extremely useful mechanism, permitting the system to find innovative and efficient solutions in many areas in the protection of human rights.³⁵

If the parties do not reach a friendly settlement, the Commission concludes the merits phase with a decision and publishes a report. Article 42 requires the Commission to consider the arguments, evidence, and information obtained during the hearings and on-site observations. Once the Commission transmits the report and its recommendations to the State party, the State must report on the measures it adopts to comply with the Commission's recommendations within a designated time. This report is transmitted only to the State, due to a restrictive and literal interpretation made by the Court.³⁶ Under Article 43 (Report on the Merits), the

on of the facts for them to be presumed to be true.» (para. 22). Likewise, in response to the State's silence, the Commission has found that "The Convention, therefore, requires States to provide the information requested by the Commission in the processing of an individual case" (para. 11) and the State "has a duty to cooperate with the organs in the Inter-American human rights system, for ideal fulfillment of its functions to protect human rights" (para. 13) in Report No 129/01, Case 12.389, *Jean Michel Richardson v. Haiti*, December 3, 2001.

³⁴ See former Rules Article 45 (requiring, among other things, that the positions and allegations of the parties be sufficiently precise, the designation of a Special Commission or a Commission to act as an organ of conciliation and to fix a time for the conclusion of the procedure).

³⁵ In the *Verbitsk v. Argentina*, as a result of an agreement between the respondent government and an individual journalist, Article 24 of the Argentinean Penal Code was repealed. This article established the crime of "desacato" for which Verbitsky had been found guilty "just like the application of the new legislation to the specific case with the objective to nullify the sentence the journalist", see Inter-American Commission of Human Rights, Report No. 22/94, Case 11.012 (Argentina), Friendly Settlement, September 20 1994, *Annual Report of the Inter-American Commission of Human Rights 1994. OAS/Ser.L/VII.88 Doc. 9 rev.*

³⁶ Inter-American Court on Human Rights, Certain Attributes of the Inter-American Commission on Human Rights (Arts. 41, 42, 44, 46, 47, 50 and 51 of the Convention on Human Rights), Advisory Opinion OC-13/93 of July 16, 1993 (deciding that a proper interpretation of Article 50 of the Convention implies that the Commission can send the report only «to the States concerned.» and not to the petitioners).

bility Report, which the Com-
tant because, as was mentioned,
endent admissibility reports or
icate that the Commission must
led to the State involved, which
ception to the rule on separate
hich allows the Commission, in
nt of admissibility until the dis-
the petition admissible, its deci-
phase of the review process.

on clarifying that the Executive
possibility for the study and ini-
though it had been the everyday
tary, it had never been formally
to make these decisions, parti-
et the requirements of the Rules
to rest.³²

le 38 (Procedure on the Merits),
and Article 42 (Decision on the
observations on the merits wit-
e case, that is after the Commis-
estion must respond to the peti-

clearly dividing the two stages,
elated to the merits of the petiti-
rties were required to argue and
ime. This provision is silent on
e parties. But the practice of the
e States.

rticle 39 presumes that the facts
oes not lead to a different conc-

resolution on Initial Processing of

Report No. 13/96, Case 10.948
well founded «the State's failure to
quivalent or similar to the one they
para. 21). Nevertheless, the petiti-
ficity and credibility in their versi-

petitioner may request the Commission to transfer the case to the Court, in which case the Commission states its position, submits evidence, and presents claims for reparations pursuant to Article 44 (Referral of the Case to the Court).

E. CLARIFICATION OF PRODUCTION OF EVIDENCE RULES

The new rules mark a step in the eventual progression towards the separation of functions between the Commission and the Court in the treatment of cases before the Inter-American system. Until the regulatory reforms were adopted, the Commission would determine the facts of a case and submit them to the Court. Once the facts were submitted to the Court, however, they would have to be re-evaluated since the Court would not give any special weight to the factual finding of the Commission or the evidence produced before the Commission.³⁷ Consequently, the duplicated task of evidence gathering and preparation resulted in the duplication of work, a prolonged process and caused the bodies to incur additional economic costs. This situation can be explained partially by the lack of specific regulations on evidence in the former Commission regulations.

The new Rules define with precision the powers of the Commission to establish the facts of a case. They provide for information gathering and hearings according to rigid requirements, procedures which could be validated by the Court and prevent the Court from having to repeat the task of collecting and evaluating evidence. Along the same line, the new Court rules allow the Court to receive evidence collected by the Commission leaving the Court to concentrate on applying and establishing the law. The new rules of the Commission and the Court could provide a more effective working relationship between the two bodies, avoiding repetition and delays in the judicial process.

Article 63 of the new Rules set forth the procedure for the presentation and production of evidence, which did not exist in the former regulations. Article 63 allows the Commission to receive witness or expert testimony and documentary evidence. The provision governing the production of documentary evidence allows the parties 'prudential' time to submit their observations, while a party proposing witness or expert testimony shall identify the witnesses in a special request. Upon accepting the witness testimony, the Commission is obliged to notify the other party of the scheduled hearing in the event that the other party requests to be present therein. Each testifying witness is required to take an oath or solemn promise to tell the truth and the Commission shall hear each testifying witness one at a time while the other wit-

³⁷ Inter-American Court of Human Rights, *Gangaram Panday* case, judgment of January 21, 1994, paras. 39-41. (The Commission submitted to the Court that the facts of the instant case were properly verified by the Commission and that, consequently, it is inappropriate to initiate a probative stage before the Court. In support it quoted the decision by the European Court of Human Rights in the *Stocké* judgment of 19 March 1991, para. 53. The Inter-American Court rejected the argument stating that the Commission and the Court perform different, albeit complementary, functions when they deal with matters related to the observance of the Convention by the States Parties and that the Court exercises full jurisdiction over all issues relevant to a case and is not bound by what the Commission may have previously decided.)

case to the Court, in which case the presents claims for reparations pursu-

OF EVIDENCE RULES

ards the separation of functions bet-
ases before the Inter-American sys-
mission would determine the facts of
bmitted to the Court, however, they
ive any special weight to the factu-
before the Commission.³⁷ Conse-
paration resulted in the duplication
ur additional economic costs. This
regulations on evidence in the for-

Commission to establish the facts
arings according to rigid require-
nd prevent the Court from having
long the same line, the new Court
Commission leaving the Court to
rules of the Commission and the
between the two bodies, avoiding

he presentation and production of
icle 63 allows the Commission to
nce. The provision governing the
prudential' time to submit their
mony shall identify the witnesses
e Commission is obliged to noti-
he other party requests to be pre-
ath or solemn promise to tell the
one at a time while the other wit-

case, judgment of January 21,
ie facts of the instant case were
ppropriate to initiate a probative
ean Court of Human Rights in the
ourt rejected the argument stating
nentary, functions when they deal
s Parties and that the Court exer-
d by what the Commission may

003)

persons are sequestered. Taken together, this set of conditions on the presentation and produc-
tion of evidence further establishes the Commission as a quasi-judicial body able to produce
reliable, trustworthy evidence satisfying the Court's evidentiary requirements.

Complementing Article 63 in the new Rules, Article 43 of the new Rules of Court governs
the admission of evidence by the Court. Rules of Court Article 43(2) stipulates that «eviden-
ce tendered to the Commission shall form part of the file, provided that it has been received in
a procedure with the presence of both parties, unless the Court considers it essential that such
evidence should be repeated.» Thus, the general rule is that the evidence collected by the
Commission is acceptable by the Court, provided that the other party was present at the time
it was received. This procedure was absent from the former regulations, which resulted in the
repeated task of information gathering by both the Commission and the Court. To date, the
Court has not applied Article 43(2), therefore it is not known how this regulation will be inter-
preted or how it will function in practice.

F. THE COMMISSION'S PREFERENCE TO REFER CASES TO THE COURT

Until the regulatory reform, the Inter-American system worked under the following presump-
tion: the majority of the cases resolved by the Commission concluded with a published report on
the merits, and only in exceptional circumstances would they be referred to the Court. That is
how it came to be that between 1997 and 2001, the Commission approved and published one-
hundred-and-five reports on the merits and only referred twenty-one cases to the Court.

This situation prompted the Commission to modify its regulations for different reasons.
On the one hand, it was difficult to determine which cases the Commission would refer to the
Court, which generated uncertainty with the petitioners and the States. On the other, the Com-
missioners understood that given the system's recent shift in focus to individual petitions, it
made sense that most of the petitions should conclude with Court-issued decisions instead of
Commission recommendations. Finally, the Commission understood that a presumption in
favor of sending cases to the Court would provide the States with an additional incentive to
reach friendly settlements, or in the alternative, to comply with the Commission's recommen-
dations, rather than receiving a judicial opinion from the Court.

Article 44 of the Rules sets forth a significant amendment by creating a presumption in
favor of sending cases to the Court, provided that the State involved has accepted the jurisdic-
tion of the Court and the State has not complied with the Commission's recommendations. In
contrast to the equivalent provision in the former system, Article 44 allows for the automatic
referral of cases to the Court where the Commission finds a refusal on the part of the State to
implement its recommendations in the report on the merits. Cases not referred to the Court are
only permitted pursuant to a "reasoned decision by an absolute majority of the members of the
Commission to the contrary." Article 44(2) provides that the Commission «shall give funda-
mental consideration to obtaining justice in a particular case» and should consider the follo-
wing factors: (a) the position of the petitioner; (b) the nature and seriousness of the violation;
(c) the need to develop or clarify the case-law of the system; (d) the future effect of the decisi-
on within the member States' legal systems; (e) the quality of the evidence available. Article
44 further sets forth criteria for a decision not to send a case to the Court such as the nature of

the violation and the quality of the evidence.³⁸ In Article 44, the Commission also sought to clarify the normative criteria used to decide whether to send a case to the Court.

As aforementioned, the former procedure created the presumption of producing a final report with recommendations, while cases referred to the Court was a rare occurrence. This reform of the Commission rules is expected to affect significantly the internal functions and procedures of the Inter-American system. On the one hand, it could improve the rate of State compliance with the Commission's decisions. On the other, it challenges the Court to respond to an increased number of cases, which will consequently place higher demands on the Court's budget and human resources. It will also force the Commission to increase its efforts to judicialize its proceedings.

G. GREATER PARTICIPATION OF THE VICTIM

The Convention, unlike the European system, does not grant an autonomous role to the victims or their representatives in deciding whether or not to refer a case to the Court nor once the case is pending before the Court.

This situation created problems for the Commission because of its duality of roles. During the handling of a case before it, the Commission in effect acted like a quasi-judicial body responsible for making a decision whether or not there was a violation, and played the role of the independent and impartial body between the petitioner and the State. But once a case was transferred to the Court, the Commission adopted the role of the victims' and/or petitioners' representative, given their lack of standing before the Court. The Commission became the main plaintiff against the State and performed all the procedures before the Court: the preparation of claims and other documents, and the presentation of evidence and oral arguments. In order to overcome their lack of standing, the petitioners were appointed as legal advisors of the Commission.

In 1996 the Court modified its regulations to grant limited autonomy to victims in the reparation stage, after the merits of the case is decided by the Court.³⁹ However, this decision by the Court left the matter only partially settled, since in all of the other stages of the proceedings, the victim's role was still relegated to that of 'advisor' to the Commission.

The new Court regulation has served to significantly advance the recognition of victims' right to autonomously participate in judicial proceedings and to preserve the independent role of the Commission before the Court. On this point, the regulation states, "after the claim has been submitted [by the Commission], the alleged victims, their families or representatives duly accredited, can present their applications, arguments and evidence autonomously throughout the entire process."⁴⁰ Nevertheless, neither the Court rules nor the Commission rules, clearly

³⁸ See Cerna, *op.cit.*

³⁹ Rules of Procedure of the Inter-American Court of Human Rights, adopted on September 16, 1996 and in force from January 1, 1997, Article 23 stated: "At the reparations stage, the representatives of the victims or of their next of kin may independently submit their own arguments and evidence."

⁴⁰ See the Court's Rules of Procedure Article 23(1): "When the application has been admitted, the alleged victims, their next of kin or their duly accredited representatives may submit their requests,

4, the Commission also sought to
a case to the Court.
presumption of producing a final
Court was a rare occurrence. This
icantly the internal functions and
it could improve the rate of State
it challenges the Court to respond
lace higher demands on the Cour-
mission to increase its efforts to

THE VICTIM

unt an autonomous role to the vic-
fer a case to the Court nor once the

i because of its duality of roles.
n effect acted like a quasi-judicial
re was a violation, and played the
itioner and the State. But once a
the role of the victims' and/or peti-
the Court. The Commission beca-
e procedures before the Court: the
ntation of evidence and oral argu-
itioners were appointed as legal

imited autonomy to victims in the
he Court.³⁹ However, this decision
ll of the other stages of the procee-
r' to the Commission.

dvance the recognition of victims'
ad to preserve the independent role
ulation states, "after the claim has
eir families or representatives duly
vidence autonomously throughout
nor the Commission rules, clearly

n Rights, adopted on September 16,
e reparations stage, the representati-
uit their own arguments and evidence."
the application has been admitted, the
ntatives may submit their requests,

11:3 (2003)

establish the appropriate procedural and judicial role of the Commission before the Court.

In a similar fashion, the Commission foresaw in its regulation many possibilities for allo-
wing a larger role by the victim in the final stages of the process, particularly in relation to the
steps related to the eventual transfer of the case to the Court. Thus it is stipulated that, once the
preliminary report is approved, the petitioner will be notified of the adoption of the report and
its transfer to the State. The petitioner will then have the opportunity within one month's time
to present his position with respect to the submission of the case to the Court. In deciding
whether to submit a case to the Court, the Commission will consider the pursuit of justice in
the particular case based, *inter alia*, on the position of the petitioner (Rules of Procedure Arti-
cle 44(2)). The new rules also establish that if the petitioner so requests, the Commission will
incorporate him or her as the Commission's delegate before the Court (Article 69). Finally if
the Commission submits the case before the Court, it will immediately notify the petitioner
and the victim of such decision (Article 71).

H. FOLLOW-UP PROCEDURES

Unlike the European system and the role of the Council of Ministers of the Council of Euro-
pe, within the Inter-American system and for final decisions by the Commission, no conven-
tional follow-up mechanism of the recommendations exists. Because of this, the Commission
has incorporated Article 46 of the new Rules, which provides a judicial framework for this fol-
low-up procedure.

Article 46 grants the Commission a supervisory role in regulating State compliance with
the Commission's recommendations in its merits reports or friendly settlement agreements.
The Commission may recommend suitable follow-up measures, such as requesting further
information from the parties and holding hearings. The Commission must also report on the
progress of State compliance with its recommendations. This procedure differs from the for-
mer system, which provided no formal supervision after the Commission completed the merit
report and the friendly settlement. Given the broad mandate of the Commission to conduct
follow-up of its recommendations, it is yet to be seen how the Commission will implement
this provision and to what extent it can enforce its recommendations.

The Commission applied Article 46 in the 2001 Annual Report, including for the first
time a section entitled "Follow-up of Recommendations". In accordance with Article 5 of
OAS General Assembly resolution 1828 (XXXI-0/01) and in conformity with the aforemen-
tioned Article 46 of the Rules, the Commission asked the States to report on their compliance
with the Commission recommendations published in its 2000 Annual Report. The Commis-
sion also decided to include on its web page a copy of the member state's responses in the situ-
ations where their responses had been expressly requested. Based on these responses received,
the Commission prepared a chart, consisting of four categories:

1. Total compliance (cases where the State has complied, to the best of its ability, with all the
recommendations issued by the Commission);

arguments and evidence, autonomously, throughout the proceeding."

2. Partial compliance (cases where the State has partially complied with the Commission's recommendations, either because it has fully complied with only some of the recommendations or because it has partly complied with all of the recommendations);
3. No compliance, with information (cases where the State has responded to the Commission's request for information and the Commission deems that the State has not sufficiently complied with the recommendations);
4. No compliance, without information (cases where the State has not responded to the Commission's request for information and has not complied with the recommendations according to the Commission's criteria).⁴¹

This chart received comments by several member States and was the subject of meaningful debate by the OAS political bodies. While none of the States challenged the Commission's power to establish a mechanism to evaluate compliance with its recommendations, many States requested the further development and clarification of these standards, as expressed in the General Assembly's Observations and Recommendations on the Annual Report of the Commission. States called on the Commission specifically "to consider the possibility of continuing to include in its annual reports information on the follow-up of its recommendations by the States; and to invite it to review, with a view to their improvement, the criteria and indicators on that subject in the report for this year."⁴²

This decision by the General Assembly is quite relevant since in the past, different States had argued that the Commission does not have the power to conduct a follow-up of its decisions.⁴³ The Commission justifies its competence to carry out follow-up activities⁴⁴ by arguing that the legal framework for monitoring compliance is based on the jurisprudence of the International Court of Justice⁴⁵ and on general principles of international law⁴⁶ that indicate that

⁴¹ Annual Report of the Inter-American Commission on Human Rights 2001 (OEA/Ser./L/V/II.114, doc. 5 Rev. 16 April 2001, original in Spanish), Chapter III, Section D, para. 64.

⁴² See AG/RES. 1894 (XXXII-O/02), Observations and Recommendations on the Annual Report of the Inter-American Commission on Human Rights (Adopted at the fourth plenary session held on June 4, 2002).

⁴³ See, e.g., Remarks by Ambassador Marco Antonio Diniz Brandão, Director General, Department of Human Rights and Social Issues of the Ministry of External Relations of Brazil, in the context of the process of reflection on the improvement of the Inter-American System for the Promotion and Protection of Human Rights, CP/CAJP-1784/01.

⁴⁴ See «Rules of Procedure of the Inter-American Commission on Human Rights in Light of the American Convention on Human Rights and the Statute of the IACHR», Presentation by the IACHR on the Mandate given in paragraph 2.c. of Resolution AG/RES. 1890 (XXXII-0/02) «Evaluation of the Workings of the Inter-American System for the Protection and Promotion of Human Rights with a view to its Improvement and Strengthening» (OEA/Ser.G/CP/CAJP-1980/02, 7 October 2002 (original in Spanish)).

⁴⁵ *Reparation for Injuries Suffered in the Service of the United Nations*, ICJ Reports 1949 p. 174 and *Effects of Awards of Compensation made by the U.N. Administrative Tribunal*, ICJ Reports 1954, p. 47.

⁴⁶ Louis Henkin (ed.): *International Law* (Oxford: Oxford University Press 1993) 350 *et seq.*, and

international bodies have the
 High the Convention (Article
 only grant the Commission
 the reports and recommen
 Convention on the Law of T
 the report, numerous State
 Commission.⁴⁷

The reform of the Commi
 Deant changes: the separa
 the presumption to send e
 he changes substantially a
 under the process more t
 stage envisions a clear be
 establishes a clear conclu
 missibility report. Furthe
 sent their respective acco
 ment of the two-stage eve
 also encourage States to
 promise between the par
 human rights violations
 parties have agreed on t
 respect these commitme

At the same time, a
 example, while under th
 five cases annually, the
 many more hearings pe
 annually, will handle th
 to the new deadlines in
 will be successful in co
 situations in which par
 Rules, which, in excep
 treated together, there
 be treated together acc
 on the overall workloa
 the OAS to allocate m
 mandates. It remains t

Jan Brownlie: *Principle*
⁴⁷ E.g. Argentina,
 and Venezuela.

international bodies have the implicit powers necessary to effectively meet their obligations. Both the Convention (Article 41) and the Statutes of the Commission (Article 18) also explicitly grant the Commission the power to request information from member states and produce the reports and recommendations it deems appropriate. In accordance with the Vienna Convention on the Law of Treaties, the general practice of States is indicative of a standard. In this regard, numerous States have collaborated with the follow-up activities carried out by the Commission.⁴⁷

I. CONCLUSION

The reform of the Commission rules of procedure may be understood to comprise two significant changes: the separation of the admissibility and merits stages of the petition process and the presumption to send cases to the Court. As the preceding paragraphs have elaborated, these changes substantially affect the decision-making process in the evaluation of petitions and render the process more transparent, clear and standardized. In particular, the admissibility stage envisions a clear beginning of the process by conducting a preliminary evaluation, and establishes a clear conclusion of the process with the publication of an admissibility or inadmissibility report. Furthermore, the incorporation of timely deadlines for both parties to present their respective accounts of the facts is an attempt to expedite the process. The development of the two-stage evaluation system and the presumption to send all the cases to the Court also encourage States to engage in friendly settlement negotiations, which facilitates a compromise between the parties and serves the State's interest to avoid public condemnation for human rights violations. Furthermore, the participation in a friendly settlement, where both parties have agreed on a series of actions, implies a stronger likelihood that the parties will respect these commitments.

At the same time, a number of questions arise as to the actual application of the rules. For example, while under the former rules, the Court received from the Commission about four to five cases annually, the new rules imply a much larger docket for the Court. More cases imply many more hearings per year. The question of how the Court, meeting only two or three times annually, will handle the additional cases is yet to be determined. A question arises with regard to the new deadlines imposed by the Commission and whether the parties and the Commission will be successful in complying with them. Likewise, there are no clearly defined standards for situations in which parties fail to respect these deadlines. With regard to Article 39 of the new Rules, which, in exceptional circumstances, allows the admissibility and merits of a case to be treated together, there are no clearly defined standards to make a decision whether a case may be treated together according to Article 39. Lastly the reform is also expected to have an impact on the overall workload of the Commission and the Court, which implies a greater demand on the OAS to allocate more human and financial resources in order for these bodies to fulfill their mandates. It remains to be seen whether these resources will finally be allocated.

Ian Brownlie: *Principles of Public International Law* (Oxford: Clarendon Press 1992) 689 *et seq.*

⁴⁷ E.g. Argentina, Brazil, Colombia, Ecuador, El Salvador, Guatemala, Mexico, Nicaragua, Peru, and Venezuela.

The most important question that remains to be answered concerns the overall impact of the reform of the Rules of Procedure in the human rights situation in the Americas and the ability of the Commission to contribute effectively to its improvement. Taken together, the new rules are an attempt to standardize the petition process before the Commission. Specifically, the rules characterize the Commission as a quasi-judicial body by emphasizing the individual petition process, pronouncing independent conclusions and recommendations with the possibility of follow-up, and producing evidence acceptable before the Court. The procedure in effect is more rigid due to the narrower and clearer definitions of the requirements. Whether this approach is the best one to respond to the human rights situations in the Americas that are ever changing remains an open question.

The President of the Commission described the human rights situation in the region to the Committee on Juridical and Political Affairs of the Permanent Council of the OAS accordingly: "Although the region has witnessed significant progress in the area of human rights, the region still faces many challenges."⁴⁸ In particular, the President emphasized the weak judiciary in many countries, the poorly trained law enforcement bodies and the lack of protection for especially vulnerable sectors of society that suffer from discrimination, such as women, indigenous communities, Afro-descendant communities, children and the handicapped. These sectors are still deprived of their right to be treated equally and the right to be free from discrimination based on their race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or other social condition. In short, the President of the Commission expressed concern for the weak institutions and democracies in the region, noting that the «things of the past» (*coup d'états* and attacks on constitutional order) are ever present today. Time will reveal just how the increased judicial approach of the recent reform of the rules of procedure will address such situations existing in the region.

Abstract: *Facing the challenge: The Inter-American Commission on Human Rights' adoption of new Rules of Procedure. The Inter-American system on the protection of human rights is currently undergoing a process of reform. This reform significantly affects the work of the two principal human rights bodies within the system: the Inter-American Commission on Human Rights and the Inter-American Court on Human Rights of the Organization of American States (OAS). This article is an in-depth analysis of the new Rules of Procedure of the Inter-American Commission on Human Rights and their context.*

Keywords: *American Convention on Human Rights; Inter-American human rights system; American Commission of Human Rights; Rules of Procedure.*

⁴⁸ See Address by Juan E. Méndez, President of the Inter-American Commission on Human Rights upon presenting the IACHR Annual Report for 2001 to the Committee on Juridical and Political Affairs of the Permanent Council of the OAS, April 30, 2002.