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Too Little, Too Late: The Pace of Adjudication of the Inter-American Commission on Human Rights

ARIEL DULITZKY*

I. INTRODUCTION

The Inter-American System for the protection of human rights (“the System”) is formed principally by the Inter-American Commission on Human Rights (“the Commission” or “IACHR”) and the Inter-American Court of Human Rights (“the Court” or “IACHR”) of the Organization of American States (OAS).¹ In its 50 years of functioning, it has had important achievements in the promotion and defense of human rights in the region. The System played an essential role when

* Clinical Professor of Law, University of Texas at Austin School of Law. I would like to thank the students of the Human Rights Clinic who for two years worked the study that serves as the basis of this article. Their dedication was and is an inspiration to me, see *infra* note 27. I also would like to thank Lawrence Helfer, Daniel Brinks and Alexandra Huneeus; the participants of the workshop *Impacto y eficacia del sistema americano de derechos humanos: Perspectivas empíricas y experiencias prácticas*, June 22nd, 2011, Buenos Aires, Argentina; of the Panel: Regional Human Rights System in Socio-Legal Perspective at the 2012 International Conference on Law and Society, Honolulu, Hawai‘i, June 5–8, 2012 and of the Rapoport Center for Human Rights and Justice Summer Fellows Workshop at the University of Texas School of Law, August 8, 2012, for their comments, reflections, and critiques of the original ideas and preliminary versions of this article. I would like to thank the Inter-American Commission on Human Rights and its Secretariat for having read a preliminary version of the study that serves as the basis for this article, for having received the Human Rights Clinic to present the report and for having provided us with invaluable information. Particular thanks to Santiago Canton and Elizabeth Abi-Mershed. As always my conversations with Denise Gilman help to sharpen my ideas. Of course, all errors are my exclusive responsibility.

1. See SCOTT DAVIDSON, THE INTER-AMERICAN HUMAN RIGHTS SYSTEM 8 (1997). In reality, when speaking of the Inter-American human rights system, one should think more broadly than the Commission and Court. As this article will show, there are very relevant actors that influence the System and its pace of adjudication including (disaggregated) States—individually and collectively—the OAS, its Secretary General, human rights organizations and the victims of human rights abuses. See also Ariel Dulitzky, *The Inter-American Human Rights System Fifty Years Later: Time For Changes*, Special Edition, REVUE QUÉBÉCOISE DE DROIT INTERNATIONAL 127, 128 (2011) [hereinafter Dulitzky, *Fifty Years*]. For the idea of a disaggregated State or multiple autonomous State actors and their relationship with the Inter-American human rights system and its implications for compliance. See Alexandra Huneeus, *Courts Resisting Courts: Lessons From The Inter-American Court’s Struggle To Enforce Human Rights*, 44 CORNELL INT’L L.J. 493 (2011).

authoritarian regimes were the rule in the hemisphere. It denounced and condemned the massive and systematic human rights violations that took place then.² The System contributed to a broader awakening of civil society in its fight against the military rulers. At the same time, the System helped the return or establishment of democracy in many countries.³ The 1980 report by the Commission on human rights in Argentina⁴ is the paradigmatic example of the work of the System during those dark years in the region.⁵

During the last twenty or thirty years, Latin America experienced a turn from military dictatorships and civil wars toward free elections.⁶ A simple reflection on the situation in 1978, the year when the American Convention on Human Rights⁷ (“American Convention” or “Convention”) entered into force, is a good example. There were civil wars or military governments in Ecuador, Peru, Bolivia, Argentina, Brazil, Uruguay, Paraguay, Chile, Honduras, El Salvador, Nicaragua, Guatemala, Panama and Haiti.⁸ Colombia was living in a situation of widespread violence caused by the army, guerrilla and drug trafficking groups.⁹ Venezuela suffered from periodic attempts of *coups d’etat*. In those years, there were gross and massive violations of human rights in Mexico.¹⁰ Forced disappearances, extrajudicial executions, death squads, clandestine detention camps, tortures, and rapes were commonplace.¹¹

2. See CECILIA MEDINA QUIROGA, *THE BATTLE OF HUMAN RIGHTS, GROSS, SYSTEMATIC VIOLATIONS AND THE INTER-AMERICAN SYSTEM*, (1988).

3. Antonio Cançado Trindade, *El Sistema Interamericano de Protección de los Derechos Humanos (1948–1995): Estado Actual y Perspectivas*, DERECHO INTERNACIONAL Y DERECHOS HUMANOS, (ed. By Bardonnnet and Cançado Trindade) (1996).

4. INFORME SOBRE LA SITUACIÓN DE LOS DERECHOS HUMANOS EN ARGENTINA (1980), OEA/SerL/V/II.49 Doc 19 (Apr. 11, 1980) [Arg.]. Lewis H. Diuguind, *OAS Rights Group Accuses Argentina Of Torture and of Killing Thousands*, THE WASHINGTON POST, Apr. 20, 1980, § 1, at A18.

5. See David Weissbrodt & Maria Luisa Bartolomei, *The Effectiveness of International Human Rights Pressures: The Case of Argentina*, 1976–1983, 75 MINN. L. REV. 1010 (1991).

6. *Id.*

7. Organization of American States, American Convention on Human Rights, Nov. 22, 1969, O.A.S.T.S. No. 36, 1144 U.N.T.S. 123 [hereinafter American Convention].

8. See Brian E. Loveman, *Military Government in Latin America 1959–1990*, THE OXFORD BIBLIOGRAPHIES (Nov. 11, 2012, 11:50 AM), <http://www.oxfordbibliographies.com/view/document/obo-9780199766581/obo-9780199766581-0015.xml;jsessionid=EE98FB770E701890EBE4D4732A682CD5?print>.

9. Ricardo Vargas, *The Revolutionary Armed Forces of Colombia (FARC) and the Illicit Drug Trade* (June 7, 1999) available at <http://www.tni.org/briefing/revolutionary-armed-forces-colombia-farc-and-illicit-drug-trade>.

10. See AMNESTY INT’L, 1980 ANNUAL REPORT 150–53, available at <http://www.amnesty.org/en/library/asset/POL10/003/1980/en/4eaa8da9-d3b3-46f4-b429-8cf536834e07/POL100031980eng.pdf>.

11. *Id.*

Today, the reality has changed dramatically. The only country in the Hemisphere where there are no free elections is Cuba. There are no civil wars in Central America. In 2000, for the first time in modern Mexican history, the opposition won the Presidency.¹² Nevertheless, widespread police violence, organized crime, corruption, intimidation and lack of independence of judges and courts, discrimination against indigenous peoples and Afro-descendants, undue restriction of freedom of expression and violence against journalists, human rights defenders and social actors, violence and discrimination against women, impunity for human rights abuses are still present throughout the region.¹³ Social, economic and cultural rights are far from being a reality for vast sectors of the population in the Hemisphere.¹⁴

The expectation that, in this changed context, the number of complaints filed with the IACHR would diminish has proven to be wrong.¹⁵ In fact, as civil society flourished in Latin America and the System became better known, the number and complexity of petitions filed with the Commission has steadily grown.¹⁶ With limited resources allocated by the OAS, this situation has resulted in a “considerable workload for the IACHR, which affects the prompt and efficient processing of cases, particularly in terms of the backlog of cases, procedural delays, and repetition of the acts . . . in proceedings.”¹⁷ The Commission has introduced various reforms to its internal practices and Rules of Procedure (“Rules”) to deal with the new influx of complaints. But still, there is a growing backlog and the length of adjudication has reached an unacceptable point.

12. MATTHEW C. GUTMANN, *THE ROMANCE OF DEMOCRACY: COMPLAINT DEFIANCE IN CONTEMPORARY MEXICO* 10 (2002), available at <http://books.google.com/books?hl=en&lr=&id=lfXRL3W764cC&oi=fnd&pg=PR9&dq=mexico+election+2000&ots=avnvKQ0Gxk&sig=K4A9YiMTUaUqLqKMrbZHRkHyWkQ#v=onepage&q=mexico%20election%202000&f=false>.

13. See AMNESTY INT’L, 2012 ANNUAL REPORT 234–38, available at <http://www.amnesty.org/en/annual-report/2012/americas>.

14. *Id.*

15. Nancy Thede and Hugues Brisson, *International Relations and the Inter-American System of Human Rights promotion and protection. Strategic exploitation of windows of opportunity*. Special Edition, REVUE QUÉBÉCOISE DE DROIT INTERNATIONAL 7, 19 (2011); See also OAS, Permanent Counsel, Report of the Special Working Group to Reflect on the Workings of the Inter-American Commission on Human Rights with a view to Strengthening the Inter-American Human Rights System for consideration by the Permanent Council, 11, GT/SIDH/13/11/rev. 2 [hereinafter OAS Working Group] (stating that “in recent years the number of cases and petitions processed by the IACHR had progressively escalated as a result of progress in the consolidation of democracy in the Hemisphere and increased participation and awareness among users of the [system]”).

16. OAS Working Group, *supra* note 15, at 11.

17. *Id.*

Although some progress has been made, States and petitioners experience long wait times before receiving a decision from the Commission on the merits of a case. For example, in the *Isaza Uribe* case, the Commission adopted an admissibility report more than 20 years after receiving the petition.¹⁸ Though the Commission originally requested information from the State both on admissibility and merits, it decided only on the admissibility issues. From November 1991 to August 1995 and then from August 1998 to November 2009, there was no procedural activity.¹⁹ In its admissibility report, the Commission considered that twenty-three years of criminal investigation constituted undue delay, despite the fact that it took the IACHR twenty-one years to arrive at that conclusion.²⁰ The Commission noted that the State did not justify or explain the period of time that passed without procedural activity.²¹ Nevertheless, the Commission did not provide any justification for its own inactivity. As Helfer stated in reference to the European Court of Human Rights (“European Court”), it is ironic that sometimes a human rights body takes longer to decide a case than the maximum length of time the System allows for proceedings in national courts.²²

While the *Isaza Uribe* case is an extreme example, there is a consensus that the Commission’s process is too slow and that the Commission has historically struggled to deal with petitions in a timely manner.²³ This view is so unexceptional that there are very few

18. The petition was received in December 1990 and the admissibility report was adopted on July 22, 2011. See Victor Manuel Isaza Uribe And Family (Columbia), Admissibility Report, Report No. 102/11, Inter-Am. Ct. H.R., Petition No. 10.737, (July 22, 2011).

19. *Id.* ¶¶ 5–6.

20. *Id.* ¶ 29.

21. *Id.*

22. Laurence R. Helfer, *Redesigning the European Court of Human Rights: Embeddedness as a Deep Structural Principle of the European Human Rights Regime*, 19 EJIL 125, 133 (2008). The European system confronts a similar but much bigger backlog and delay problem.

23. Comm. on Int’l Human Rights, *The Inter-American Commission on Human Rights: A Promise Unfulfilled*, 48 REC. ASS’N B. CITY N.Y. 589, 602–04 (1993); INSTITUTO LATINOAMERICANO DE SERVICIOS LEGALES ALTERNATIVOS (ILSA), SISTEMA INTERAMERICANO PARA LA PROTECCION DE LOS DERECHOS HUMANOS. APORTES PARA UNA EVALUACION (1994) at 66–67; Dinah Shelton, *Improving Human Rights Protections: Recommendations for Enhancing the Effectiveness of the Inter-American Commission and Inter-American Court of Human Rights*, 3 AM. U. J. INT’L L. & POL’Y 323, 330 (1988); HECTOR FAUNDEZ LEDESMA, EL SISTEMA INTERAMERICANO DE PROTECCIÓN DE LOS DERECHOS HUMANOS, 507 (2004); Ariel Dulitzky, *La Duración Del Procedimiento Ante El Sistema Interamericano De Protección De Los Derechos Humanos: Responsabilidades Compartidas*, EL FUTURO DEL SISTEMA INTERAMERICANO DE PROTECCIÓN DE LOS DERECHOS HUMANOS 365 (Juan E. Méndez & Francisco Cox eds., 1998); Robert K. Goldman, *History and Action: The Inter-American Human Rights System and the Role of the Inter-American Commission on Human Rights*, 31 HUM. RTS. Q. 856, 882–83 (2009), available at http://digitalcommons.wcl.american.edu/cgi/viewcontent.cgi?article=1027&context=facsch_lawrev.

examinations on the length of the IACHR's adjudication process and no known integral quantitative or empirical studies on its pace of individual petition processing.²⁴ Most studies of the Commission highlight the problems caused by the delays, the need to expedite cases and recommendations on how to achieve that goal.²⁵ But given that the pace of adjudication is central to the efficiency and effectiveness of the work of the Commission, it is crucial to understand the exact pace, how and why delays occur, what the extent of the backlog is, and crucially, what the proper policy framework is to understand and deal with such pace.²⁶ This article explores these questions.

Much of the research and analysis included in this article relies heavily on the results of a two-year study that I conducted with my students enrolled in the Human Rights Clinic at the University of Texas School of Law ("the Human Rights Clinic" or "the Clinic").²⁷ The purpose of the study was to examine the IACHR's length of procedure, identify the causes of the delays, and make recommendations that could improve the Commission's efficiency. For that purpose, we created a database chronicling the length of time of each step in the Commission's procedures for every adjudicated petition and case since 1996.²⁸ We also compiled information on the length of time it took for subsequent procedures for each case in the Inter-American Court.²⁹ As a result of our research, we produced a report entitled, "Maximizing

24. I know of only two studies, not exclusively empirical, written specifically on the length of the procedure of the System. The first one is a short article that I wrote 15 years ago. See Dulitzky, *Duración*, *supra* note 23. And the second, is a recent article, Federico Ramos, *The Need For An In-Time Response: The Challenge For The Inter-American Commission On Human Rights For The Next Decade* 18 SW. J. INT'L L. 159 (2011).

25. See also Alex Whiting, *International Criminal Prosecutions, Justice Delayed Can Be Justice Delivered*, 50 HARV. INT'L L.J. 323, 363 (2009) in the context of international criminal law.

26. For a similar question in the context of international criminal justice, see Jean Galbraith, *The Pace of International Criminal Justice*, 31 MICH. J. INT'L L. 79 (2009).

27. Under my supervision, Grace Beecroft, Priya Bhandari, Robert Brown, Stacy Cammarano, Amy Fang, Nicholas Hughes, Nishi Kothari, and Monica Uribe participated in different stages of the research and report writing process. Celina Van Dembroucke created the first version of the database that was updated with the support of Carlos Mejias, Anne-Marie Huff, Victoria Cruz, Melissa Brightwell, Anna Koob, and Katie Sobering. Ted Magee, the Clinic Administrator, and Shailie Thakkar edited the final version of the report. As the Clinic's Director and former Assistant Executive Secretary of the Commission, I developed the research methodology, supervised the work, reviewed the different drafts of the report, and was responsible for the final version of the report.

28. HUMAN RIGHTS CLINIC, UNIV. OF TEXAS SCH. OF LAW, MAXIMIZING JUSTICE, MINIMIZING DELAY: STREAMLINING PROCEDURES OF THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS 4 (2011), available at http://www.utexas.edu/law/clinics/humanrights/work/Maximizing_Justice_Minimizing_Delay_at_the_IACHR.pdf [hereinafter MAXIMIZING JUSTICE].

29. *Id.*

Justice, Minimizing Delay: Streamlining Procedures of the Inter-American Commission on Human Rights”³⁰ (the “Report”), completed in December 2011.³¹ This article, particularly sections IV-VI, borrows extensively from the research and analysis, as well as some language, in the Report.

The Report’s main findings are that overall, there is a large backlog of cases, the Commission’s procedure is frontloaded, and petitions and cases have long wait times.³² Despite noteworthy progress, more petitions and cases are being added to the backlog every year.³³ Further, the Report shows that the Commission makes considerably more admissibility decisions than any other type of decision.³⁴

This increased backlog has created long wait times for petitioners.³⁵ Using the database of publicly available reports, the Clinic determined that it takes an average of six and a half years from the initial submission of a petition to the final merits decision.³⁶ Within that time, it takes over four years just for a decision on admissibility.³⁷ The Clinic’s findings demonstrate that the average wait time for each type of decision has increased progressively for the last fifteen years.³⁸ Part of the increase in the wait times could be attributed to the fact that the Commission is currently dealing with a backlog of old petitions.³⁹

The data suggests that the reforms to the Rules in 2000 and 2009, as well as the reorganization of the Executive Secretariat in 2008, have not reduced the length of time from the submission of petitions to their final resolution.⁴⁰ The Report concludes that the 2000 reforms dividing the procedure into admissibility and merits is one of the main factors

30. *Id.*

31. *Id.* at 1.

32. *Id.* at 3.

33. *Id.* at 4.

34. HUMAN RIGHTS CLINIC, UNIV. OF TEXAS SCH. OF LAW, MAXIMIZING JUSTICE, MINIMIZING DELAY: STREAMLINING PROCEDURES OF THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS 4 (2011), http://www.utexas.edu/law/clinics/humanrights/work/Maximizing_Justice_Minimizing_Delay_at_the_IACHR.pdf

35. *Id.*

36. *Id.*

37. *Id.*

38. *Id.*

39. *Id.*

40. HUMAN RIGHTS CLINIC, UNIV. OF TEXAS SCH. OF LAW, MAXIMIZING JUSTICE, MINIMIZING DELAY: STREAMLINING PROCEDURES OF THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS 4 (2011), http://www.utexas.edu/law/clinics/humanrights/work/Maximizing_Justice_Minimizing_Delay_at_the_IACHR.pdf

leading to the current backlog and delay,⁴¹ as it shifted the focus of the Commission to the admissibility stage.⁴²

This article, which borrows some sections from the writings of the Clinic's Report, begins with an overview of the Commission and its multiple functions, including the adjudicatory ones. Next, the article goes into the results of the empirical research to assess the growing backlog and long procedural delays based on the database we created. The following section considers some of the factors contributing to the current situation. I continue with a critical description of the procedural, administrative and technical measures adopted by the Commission in the last decade. While there are several reforms that have had a positive impact, the article also identifies well-intended reforms that have had unintended negative consequences.⁴³

The article then moves into a discussion on what makes a human rights body effective and how the pursuit of efficacy could complement or contradict the purpose of being an effective adjudicator simultaneously. The article explains why a goal-based definition of effectiveness is needed in order to both assess the performance of the Commission and the possibilities and limitations of the measures that the Commission could adopt to speed up its process, and to deal with its current backlog. In order to do that, I explore the different goals that the Commission pursues in its adjudicatory role. Based on this analysis, the article presents several recommendations—some already included in the Report—including both internal reforms and changes to the Rules, which could increase efficiency while preserving or even strengthening the effectiveness of the Commission. While I conclude that lack of sufficient financial resources is one of the main factors contributing to the current situation, I also argue for the implementation of several measures that do not require additional resources or that could improve the efficient use of the limited funds currently available to the Commission.

41. *Id.*

42. *Id.*

43. This article does not deal with the changes in the Rules of Procedure of the Commission that were introduced on March 19, 2013 in detail. Press Release, Inter-Am. Comm'n H.R., *IACHR Approves Reform of its Rules of Procedure, Policies and Practices* (Washington, D.C., Mar. 19, 2013), ORGANIZATION OF AMERICAN STATES, http://www.oas.org/en/iachr/media_center/PReleases/2013/019.asp. The article makes references to some of those reforms where pertinent. For an analysis of the draft of those reforms, see Letter from Ariel Dulitzky, Dir., Human Rights Clinic, University of Texas School of Law, to Emilio Álvarez Icaza, Executive Secretariat, Inter-Am. Comm'n H.R., ORGANIZATION OF AMERICAN STATES, *available at* <http://www.oas.org/es/cidh/consulta2013/docs/UTAustin%20Human%20Rights%20Clinic%20Comments%20on%20IACHR%20Proposals.pdf>.

II. OVERVIEW OF THE COMMISSION: MULTIPLE FUNCTIONS INCLUDING ADJUDICATORY ONES

The OAS adopted the American Declaration of the Rights and Duties of Man (“American Declaration”) in May 1948.⁴⁴ The Commission was created ten years later, in 1959, with a vague mandate and a weak juridical constitution.⁴⁵ It is composed of seven members who are elected in their individual capacity by the OAS General Assembly.⁴⁶ The Convention assigned the Commission specific conventional duties and powers.⁴⁷ It also created the IACHR, which is composed of seven judges elected by the General Assembly of the OAS.⁴⁸ The IACHR is an autonomous organ of the OAS, as mandated by the OAS Charter,⁴⁹ the Convention, and its Statute.⁵⁰ The body meets in at least two regular sessions per year but may convene in extraordinary circumstances.⁵¹ The Commission has been entrusted to promote the observance and protection of human rights in the Americas⁵² by exercising political, diplomatic, legal, and adjudicatory powers.

The IACHR monitors compliance with treaty obligations for the twenty-five member States that have ratified the Convention.⁵³ The Commission monitors compliance with the eleven member states that have not yet become parties to the Convention by applying the human

44. See Organization of American States, American Declaration on the Rights and Duties of Man, May 2, 1948, O.A.S. [hereinafter Declaration] (adopted by the Ninth International Conference of American States on May 2, 1948).

45. *What is the IACHR?*, ORGANIZATION OF AMERICAN STATES (Jan. 27, 2013), <http://www.oas.org/en/iachr/mandate/what.asp>.

46. American Convention, *supra* note 7, arts. 34, 36.

47. *Id.* art. 41.

48. *Id.* arts. 52–53.

49. Organization of American States Charter, Dec. 13, 1951, art. 106, 119 U.N.T.S. 3.

50. Organization of American States, Statute of the Inter-American Commission on Human Rights, art. 1, O.A.S. G.A. Res. 447 (Oct. 1979) [hereinafter Commission Statute].

51. Rules of Procedure, Inter-Am. Comm’n H.R., art. 14.1 [hereinafter Commission Rules of Procedure] (amended 2011).

52. *Id.* art. 1.1.

53. 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, Uruguay, and Venezuela. Trinidad and Tobago ratified the Convention on April 3, 1991 and denounced it on May 26, 1998. *American Convention On Human Rights "Pact Of San Jose, Costa Rica"*, B-32, Nov. 22, 1969, 1144 U.N.T.S. 144, available at http://www.oas.org/dil/treaties_B-32_American_Convention_on_Human_Rights_sign.htm#. On September 12th 2012, Venezuela announced its decision to denounce the American Convention in accordance with Article 78. Letter from Mr. José Miguel Insulza, Secretary General, Organization of American States, to Minister of Popular Power for Foreign Affairs of the Bolivian Republic of Venezuela, (Sept. 6, 2012), available at http://www.oas.org/dil/Nota_Rep%C3%BAblica_Bolivariana_Venezuela_to_SG.English.pdf.

rights obligations set forth in the Declaration.⁵⁴ The Court monitors compliance under the Convention for the twenty countries that have become parties to the Convention and that have recognized its compulsory jurisdiction.⁵⁵

In addition to its adjudicative functions in the case system, the IACHR has received other important promotional, monitoring, and diplomatic tasks.⁵⁶ These multiple functions compete for the scarce time and resources of the Commission. In the last several years, the Commission has increased the number of activities that it carries out in addition to adjudicating cases.⁵⁷ For instance, the IACHR has increased the number of thematic reports it issues from one—prior to 2001—to twenty between 2002 and 2010.⁵⁸ In 2011, the IACHR “took cognizance of over 400 urgent requests for precautionary measures, held 91 hearings and 54 Working Meetings, carried out over 30 Working Visits, issued 138 Press Releases and conducted 5 Seminars and Training Sessions.”⁵⁹

Some of the additional promotional activities of the Commission have direct and positive impact on the adjudication of cases.⁶⁰ For example, the Commission has created several “rapporteurships”⁶¹ that

54. Antigua and Barbuda, Bahamas, Belize, Canada, Guyana, St. Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Trinidad and Tobago and U.S. The eleventh country, which has not yet ratified the Convention, is Cuba. Resolution VI of the Eighth Meeting of Consultation Ministers of Foreign Affairs (1962) excluded “the present government of Cuba from participation in the inter-American system.” See Interpretation of the American Declaration of Rights and Duties of Man Within the Framework of Article 64 of the American Convention on Human Rights, Advisory Opinion OC-10/89, Inter-Am. Ct. H.R. (ser. A) No. 10, ¶¶ 40–45 (July 14, 1989); James Terry Roach and Jay Pinkerton v. United States of America, Case 9647, Inter-Am. Comm’n H.R., Report No. 3/87, OEA/Ser.L/V, ¶¶ 46–49 (1987).

55. Argentina, Bolivia, Brazil, Chile, Colombia, Costa Rica, Dominican Republic, Ecuador, El Salvador, Guatemala, Haiti, Honduras, Mexico, Nicaragua, Panama, Paraguay, Peru, Suriname, Uruguay, and Venezuela. For the situation of Venezuela, see *supra* note 53.

56. These additional duties include: developing awareness of human rights; making recommendations to Member State governments; preparing studies and reports; requesting information from Member States on the measures adopted to address human rights concerns; responding to Member State inquiries on human rights matters and providing those States with the requested advisory services if possible; and submitting an annual report to the General Assembly of the OAS. American Convention, *supra* note 7, art. 41. See MAXIMIZING JUSTICE, *supra* note 28, at 17.

57. MAXIMIZING JUSTICE, *supra* note 28, at 17.

58. Information prepared for the Human Rights Clinic of the University of Texas School of Law in relation to the draft Study on Efficiency and Effectiveness of the Inter-American Commission on Human Rights [hereinafter Commission’s Answers].

59. See Position Document on the Process of Strengthening of the Inter-American System for the Protection of Human Rights, Inter-Am. Comm’n H.R., OEA/Ser.L/V/II, ¶ 29, doc. 68 (2012).

60. MAXIMIZING JUSTICE, *supra* note 28, at 17.

61. *Id.* The IACHR has created thematic rapporteurships to devote its attention to key issues and to certain groups, communities, and peoples that are in a situation of special vulnerability and

focus on certain vulnerable groups in order to promote thematic areas.⁶² Rapporteurships play a role in the processing of individual petitions and cases. Rapporteurships also draft decisions on admissibility and merits for petitions and cases in their respective thematic areas, litigate or support cases in their areas before the Court,⁶³ provide expert knowledge to the Commission in the handling of those cases, and follow up on the Commission's recommendations on those cases.⁶⁴

The Commission conducts on-site and working visits to Member States for the purpose of monitoring and promoting human rights in that country.⁶⁵ In the last decade, the Commission increased the number of working visits it conducted.⁶⁶ Visits provide support for the adjudicative role of the Commission as they help the Commission contextualize the individual complaints and facilitate the understanding of the underlying problems. The visits also raise the profile of the Commission, which in turn attracts new petitions and strengthens the legitimacy of the Commission by supporting implementation of its decisions.⁶⁷ Visits further afford petitioners the opportunity to file new complaints⁶⁸ or to

have faced historical discrimination. The aim of the thematic rapporteurships is to strengthen, promote, and systematize the Commission's own work on the pertinent issue. The offices of rapporteurs may be assigned to a member of the Commission or to other persons designated by the Commission. Currently there are eight Rapporteurships on Women, Children, Migrant Workers and their Families, Human Rights Defenders, Afrodescendants and Against Racial Discrimination, Persons Deprived of Their Liberty, Indigenous Peoples and Freedom of Expression. The last one is the only rapporteurship assigned to a Special Rapporteur who is not a member of the Commission. See *Thematic Rapporteurships and Units for Inter-American Commission on Human Rights*, ORGANIZATION OF AMERICAN STATES, <http://www.oas.org/en/iachr/mandate/rappoteurships.asp> (last visited July 29, 2013).

62. *Id.*

63. *Id.* For instance, IACHR Application before the Inter-American Court of Human Rights in the case of Claude Reyes et al. (Marcel Claude Reyes, Sebastian Cox Urrejola, and Arturo Longton Guerrero) Case No. 12.108 against the State of Chile (appointing Eduardo Berton, then Special Rapporteur on Freedom of Expression, as Legal advisor of the Commission). See *Claude Reyes et al. v. Chile*, Case 12.108, Inter-Am. Comm'n H.R., Report No. 60/03 (July 8, 2005), *available at* <http://www.cidh.oas.org/demandas/12.108%20Claude%20Reyes%20Chile%2008jul05%20ENGLISH.pdf>.

64. For example, the website of the Rapporteurship on the Rights of the Child (stating that "[t]he Rapporteurship provides advice to the IACHR in the proceedings of individual petitions, cases and requests of precautionary and provisional measures which address the rights of the child"). See *Rapporteurship on the Rights of the Child*, ORG. OF AM. STATES, <http://www.oas.org/en/iachr/children> (last visited Nov. 4, 2012).

65. MAXIMIZING JUSTICE, *supra* note 28, at 18.

66. In 2002, the IACHR conducted five on-site country visits. In 2010, there were 10. See Commission's Answers, *supra* note 58, at 12.

67. MAXIMIZING JUSTICE, *supra* note 28, at 18.

68. For instance, during the visit to Peru in 1999, the Commission received more than 600 new petitions. See *Second Report on the Situation of Human Rights in Peru*, Inter-Am. Comm'n H.R., Report No. 2, OEA/Ser.L/V/II.106, doc. 59 rev. 3 (2000).

present new evidence.⁶⁹ In addition to those benefits, visits give the Commission the chance to facilitate friendly settlements negotiations, evaluate implementation of previous recommendations, and promote strategies to apply the Convention and other Inter-American instruments and facilitate full compliance with the decisions of the Commission and the Court.⁷⁰

In sum, the multiple functions of the Commission are both an asset and a hindrance. As these functions have expanded to include the adjudicatory role, they have also resulted in a backlog of cases and presented important identity challenges to the IACHR. Today, OAS Member States are discussing where the focus of the Commission's work should lie, and how the IACHR should balance all its different activities.⁷¹

A. Case Adjudication

The Commission processes individual complaints acting as a quasi-judicial adjudicative body.⁷² Any person, group of persons, or non-governmental organization (NGO) claiming a violation of the rights protected in the American Convention,⁷³ the American Declaration, or any other Inter-American instrument may file a petition.⁷⁴ The petition may be presented on behalf of the person filing the petition or on behalf

69. MAXIMIZING JUSTICE, *supra* note 28, at 18.

70. For instance, Inter-Am. Comm'n H.R. Press Release 89/11: IACHR Concludes Working Visit to Paraguay. Washington, D.C., Aug. 12, 2011 (stating that the purpose of the visit was to conduct promotional activities, encourage compliance with the decisions of Commission and the Court, promote the use of the friendly settlement mechanism and to further its understanding of the human rights situation in Paraguay). See Press Release, Inter-Am. Comm'n H.R., IACHR Concludes Working Visit to Paraguay, Press Release 89/11 (Aug. 12, 2011).

71. OAS Working Group, *supra* note 15.

72. W. Michael Reisman, *Practical Matters for Consideration in the Establishment of a Regional Human Rights Mechanism: Lessons from the Inter-American Experience*, 1995 ST. LOUIS-WARSAW TRANSATLANTIC L.J. 89 (1995).

73. American Convention, *supra* note 7, art. 44.

74. Commission Rules of Procedure, *supra* note 51, art. 23. The other instruments are the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women "Convention of Belem do Para," June 9, 1994, O.A.S.T.S. 1994 A-61 (entered into force Mar. 5, 1995), art. 12 [Convention of Belem do Para]; Inter-American Convention on Forced Disappearance of Persons, June 9, 1994, O.A.S.T.S. 1994 A-60 (entered into force Mar. 28 1996), art. 13 [Convention on Forced Disappearances]; Inter-American Convention to Prevent and Punish Torture, Sept. 12, 1985, O.A.S.T.S. 1985 No. 67 A-51 (entered into force Feb. 28, 1987), arts. 8, 16; Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social, and Cultural Rights "Protocol of San Salvador," Nov. 17, 1988, O.A.S.T.S. 1988 No. 69 A-52 (entered into force Nov. 16, 1999), art. 19.6.

of a third person.⁷⁵ The Commission may only process individual petitions against OAS member states.⁷⁶

The petitions presented to the Commission must show that the victim has exhausted all domestic remedies or that there is a permissible exception to this requirement.⁷⁷ If domestic remedies have been exhausted, the petition must be presented to the Commission within six months after the notification of the final decision in the domestic proceedings.⁷⁸

Upon receiving a complaint, the Commission, acting through its Executive Secretariat, assigns the complaint a number and starts to evaluate it as a petition.⁷⁹ If the petition meets *prima facie* elements for *processability*, it is transmitted to the State requesting its response on the admissibility requirements.⁸⁰ The Commission can declare the petition inadmissible and issue an express decision to that effect, thus terminating the petition; or it can find the petition admissible, at which point the petition is registered as a case.⁸¹ The Commission need not formally declare a petition admissible before addressing the merits,⁸² nevertheless, the Commission will do so in most cases. In serious and urgent cases, or when it is believed that the life or personal integrity of a person is in real and imminent danger, the Commission may request a response on the admissibility and merits.⁸³ Also, in exceptional circumstances, the Commission may defer its admissibility decision and address it simultaneously with its final decision on the merits.⁸⁴ Once a case is registered, the IACHR will give petitioners time to file a brief on

75. *Metropolitan Nature Reserve v. Panama*, Case 11.533, Inter-Am. Comm'n H.R., Report No. 88/03, OEA/Ser.L/V/II.118, doc. 70 rev. ¶ 27 (2003) (stating that referral to the Commission of individual petitions does not require, unlike established practice under the European System or under the United Nations Human Rights Committee, that petitioners be victims *per se*).

76. Brian D. Tittmore, *The Dann Litigation and International Human Rights Law: The Proceedings and Decision of the Inter-American Commission on Human Rights*, 31 AM. INDIAN L. REV. 593, 600 (2007).

77. American Convention, *supra* note 7, art. 46; Commission Rules of Procedure, *supra* note 51, art. 31; *see, e.g.*, *Medellin, Ramirez Cardenas and Leal Garcia*, United States, Case 12.644, Inter-Am. Comm'n H.R., Report No. 90/90 (2009).

78. *See* American Convention, *supra* note 7, art. 46.1.b; Commission Rules of Procedure, *supra* note 51, art. 32.1.

79. Commission Rules of Procedure, *supra* note 51, art. 29.1.a.

80. *Id.* arts. 30.1–30.2.

81. *Id.* arts. 36.1–30.2.

82. *Id.* art. 36.3; *see, e.g.*, *Velasquez Rodriguez Case*, Preliminary Objections, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 1, ¶¶ 39–41 (June 26, 1989) (stating that there is nothing in the Convention or in the Rules that requires an express declaration of admissibility, either at the Secretariat stage or later, when the Commission itself is involved).

83. Commission Rules of Procedure, *supra* note 51, at arts 30.4, 30.7.

84. *Id.* art. 36.3.

the merits.⁸⁵ The Commission will transmit that brief to the State and ask for its observations.⁸⁶

The IACHR can convene hearings on petitions and cases.⁸⁷ “During the hearing, the parties may present any document, testimony, expert report or item of evidence. At the request of a party or on its own initiative, the Commission may receive the testimony of witnesses or experts.”⁸⁸

At any point during the petition or case process, but always before ruling on the merits, at the request of the parties or at its own initiative, the Commission should attempt to engage in friendly settlement proceedings.⁸⁹ If an agreement between the parties is reached, the Commission adopts a report on the agreement.⁹⁰ If the process fails, the Commission rules on the merits, and transmits this preliminary report to the State with time to implement its recommendations.⁹¹ If the State has ratified the Convention and accepted the jurisdiction of the Court, the IACHR may refer the case to the Court for a decision on the merits.⁹² When the State has failed to comply with its recommendations, there is a presumption that the Commission will refer the case to the Court.⁹³

If the case is not transmitted to the Court, the Commission shall issue a final merits report and give additional time to comply with the recommendations.⁹⁴ Finally, the IACHR must decide whether to publish it.⁹⁵ The Commission may then adopt the appropriate follow-up measures.⁹⁶

III. A BRIEF METHODOLOGICAL NOTE ON OUR RESEARCH⁹⁷

In order to study the pace of adjudication, the Human Rights Clinic created a database chronicling the length of time of each step in the Commission’s procedures for every adjudicated petition and case since 1996 and up to 2010.⁹⁸ The decisions themselves, located on the

85. *Id.* art. 37.1.

86. *Id.*

87. *Id.* art. 64.1.

88. *Id.* art. 65.1.

89. Rules of Procedure, Inter-Am. Comm’n H.R., art. 40.1 (amended 2011).

90. *Id.* art. 40.5.

91. *Id.* art. 44.2.

92. *Id.* art. 45.2. *See also* American Convention, *supra* note 7, art. 62.1.

93. Commission Rules of Procedure, *supra* note 51, art. 45.1.

94. *Id.* arts. 47.1–47.2

95. *Id.* art. 47.3.

96. *Id.* art. 48.1.

97. *See* MAXIMIZING JUSTICE, *supra* note 28, at 30–31.

98. The database continues to be updated by the Human Rights Clinic. It can be accessed by

Commission's website, served as the source of the data.⁹⁹ We also compiled the length of time the procedures took for each case in the Court. The database omits petitions and cases that are currently waiting in the Commission's docket as we do not have access to them. The Clinic created a table with all the published decisions and coded the dates of the initial submission and the date of the adoption of the published report, using the data contained in those reports.

The database is limited as it only reflects the cases with published decisions. This limitation is likely insignificant to our final conclusions, because if anything, this omission leads to an understatement of the length of delays, as is later explained. In the past, the Commission chose to review petitions based on the strength of the petitioner's facts, the legal arguments raised, the attitude of the respondent Government, and/or the constant follow-up of the petitioner.¹⁰⁰ Only recently has the Commission adopted a stricter chronological order policy.¹⁰¹ Because previously published decisions were prioritized based on their strength, the database is predictably biased towards petitions and cases with speedier adjudications.¹⁰² Our findings go up to the end of 2010, the last published Annual Report at the time we concluded our study.

In addition, this article's findings are based on the analysis of quantitative data, interviews conducted with officers of the Commission's Executive Secretariat, extensive research of primary and secondary sources, as well as my personal experience serving as Assistant Executive Secretary of the Commission between 2001 and 2007. In March 2011, the Clinic prepared a list of questions that were submitted to the Executive Secretary of the Commission. The Clinic received comprehensive answers to these questions on October 4, 2011. The Clinic concluded its Report in December 2011, and in March of 2012, we presented the results of our study to the plenary of the Commission. The report was released in July 2012.

the public upon request to the Clinic.

99. *Reports on Cases for Inter-American Commission of Human Rights*, ORGANIZATION OF AMERICAN STATES, http://www.oas.org/en/iachr/decisions/cases_reports.asp.

100. MAXIMIZING JUSTICE, *supra* note 28, at 31. It is my understanding that this policy was unusual for international and regional human rights bodies.

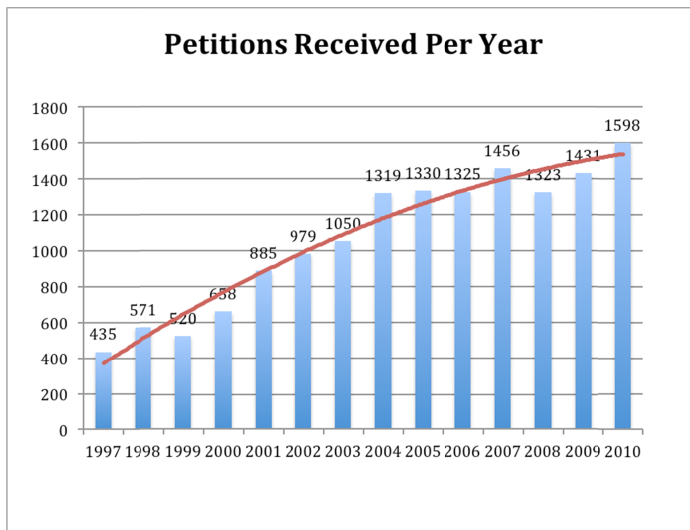
101. *Id.* Even so, there are clear exceptions to this rule. For example, consider the disparities among these three decisions adopted in March 2010 dealing with Brazilian petitions filed from 2001 to 2005. José Do Egito Romão Diniz v. Brazil, Petition No. 262-05, Inter-Am. Comm'n H.R., Report No. 6/10 (Mar. 15, 2010) (submitted Mar. 14, 2005); Fátima Regina Nascimento de Oliveira and Maura Tatiane Ferreira Alves v. Brazil, Petition No. 12.378, Inter-Am. Comm'n H.R., Report No. 7/10 (Mar. 15, 2010) (submitted Mar. 22, 2001); Ivanildo Amaro da Silva et al. v. Brazil, Petition No. 1198-05, Inter-Am. Comm'n H.R., report No. 38/10 (Mar. 17, 2010) (submitted Oct. 24, 2005), *all available at* <http://www.cidh.oas.org/casos/10.eng.htm>.

102. MAXIMIZING JUSTICE, *supra* note 28, at 31.

IV. THE CURRENT SITUATION OF THE CASE SYSTEM: BACKLOGGED, FRONTLOADED AND SLOW PROCESS

There is a general consensus that the Commission's adjudicatory process is complex, lengthy and slow.¹⁰³ Our research shows that the Commission has a large backlog of cases and petitions, and there are long procedural delays.¹⁰⁴ The Commission is aware of and agrees with this diagnosis.¹⁰⁵

The Commission receives between 1,300 and 1,500 petitions every year.¹⁰⁶ This number has increased exponentially in the last fifteen years, jumping from 439 in 1997 to 1598 in 2010.¹⁰⁷ Currently there are approximately 5,200 petitions waiting for an initial review, dating back to 2008.¹⁰⁸ This backlog of new petitions is drastically lower than it was



103. See OAS Working Group, *supra* note 15. The OAS Member States had identified that one of the “main challenges” of the System is to “increase efficiency and expediency in the processing of petitions and cases.” *Id.* at VIII.ii.1. Already in 2000, the OAS recommended to the Commission to make “all necessary efforts to ensure that individual cases are processed as expeditiously as possible.” OAS General Assembly, Resolution AG/RES. 1701 (XXX-O/00) *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*, CP/CAJP-1823/01 rev. 1, art. 6.c.

104. MAXIMIZING JUSTICE, *supra* note 28, at 24.

105. ORGANIZATION OF AMERICAN STATES, INTER-AM. COMM’N H.R., STRATEGIC PLAN 2011–2015, PART I: 50 YEARS DEFENDING HUMAN RIGHTS: RESULTS AND CHALLENGES, 59 (Jan. 2011) [hereinafter STRATEGIC PLAN PART I].

106. See Inter-Am. Comm’n H.R., *IACHR Annual Report 2010*, OEA/Ser.L/V/II.40, doc. 5, at ch. III, available at <http://www.cidh.oas.org/annualrep/2010eng/TOC.htm>.

107. MAXIMIZING JUSTICE, *supra* note 28, at 24.

108. *Id.* at 26.

previously, as the Executive Secretariat brought in additional resources to specifically eliminate this backlog by the year 2015. Only since 2008 has the Commission been able to evaluate more petitions per year than it receives.¹⁰⁹

Only 10% to 13% of new petitions are found by the Secretariat to be *receivable* or *processable*, which means that they meet the minimum requirements to be transmitted to the State.¹¹⁰ The Executive Secretariat summarily dismisses 87% to 90% without receiving any formal, public decision by the Commission.¹¹¹ As such, this process lacks any type of oversight and accountability. Neither the members of the Commission nor the public in general know about the types of complaints, the States concerned, nor the reasons for the dismissal of 90 % of the new petitions by the Executive Secretariat. Even with this high percentage of new petitions dismissed, 130 to 275 new petitions are added to the Commission's docket yearly.¹¹²

The Commission cannot keep up with the demand for rulings on petitions and cases, thus forming a backlog. In 2010, the Commission added 275 new petitions to its docket. But that year, which was its most productive, the Commission only ruled on 153 petitions and cases, including fifty-five archival decisions.¹¹³ Only fifteen of these decisions fully adjudicated a petition, with four merits decisions, and eleven friendly settlements.¹¹⁴ On top of that, the Commission referred sixteen cases to the Court that year.¹¹⁵ The fifty-five archival decisions have effects similar to that of inadmissibility decisions in that they are eliminated from the list of pending cases and petitions.¹¹⁶ Of the remaining decisions, only seventy-three were determined admissible, which is just the first step in the process.¹¹⁷

109. *Id.*

110. *Id.* at 25.

111. *Id.*

112. MAXIMIZING JUSTICE, *supra* note 28, at 25.

113. *Id.* at 25. Archived cases are those where the grounds for the petition or case do not exist or subsist or where the information necessary for the adoption of a decision is unavailable. As a result, the Commission notifies the parties of the possibility of a decision to archive, requests more information, and eventually decides to archive the case. Commission Rules of Procedure, *supra* note 51, art. 42.

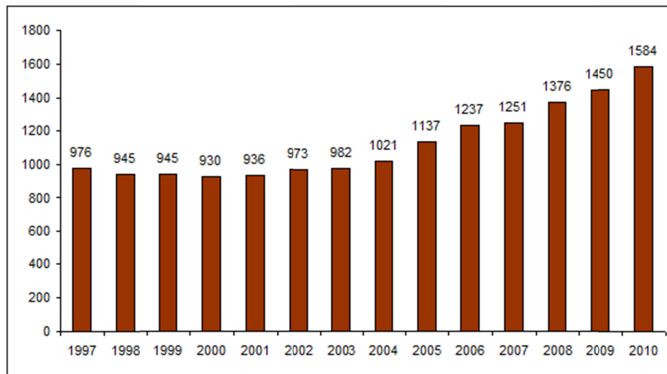
114. *Id.*

115. *Id.*

116. *Id.* at 26.

117. *Id.*

Number of pending petitions and cases



These numbers demonstrate that the focus of the Commission is not on the merits stage, which is the only one that provides victims with an opportunity to receive some kind of redress. Since 2002, with the exception of 2009, the Commission has published less than ten merits decisions every year. In 2010, just over 15% of the Commission's decisions were fully adjudicated in the form of a merits or friendly settlement decision.¹¹⁸ We did not include archival decisions as decisions, which definitively decide cases and petitions. Although archived cases are eliminated from the docket, these decisions do not contain any explicit or implicit determination on the complaint, nor do they result in final relief for the petitioner. Even including the cases submitted to the Court, that number only rises to 29% of cases being fully decided.

While the Commission, with limited resources and a diversified set of activities, produces more decisions than in the past,¹¹⁹ an increasing number of petitions and cases remain in the system without a final decision. According to the Executive Secretariat, by the end of 2008, 1,296 petitions and cases were being processed, with 904 (69%) in the admissibility stage and 392 (31%) in the merits stage.¹²⁰ As of August 30, 2011, those numbers grew to 5,213 petitions pending initial

118. *Id.* at 27.

119. Thirty-one decisions in 1996 and 139 in 2010. See table of decisions by year.

120. Santiago A. Canton, Exec. Sec'y of the Inter-Am. Comm'n on H.R., Short-, Medium-, and Long-Term Budgetary Requirements of the Inter-American Commission on Human Rights, Presentation at the Joint Meeting of the Committee on Juridical and Political Affairs and the Committee on Administrative and Budgetary Affairs, 3 (Feb. 5, 2009), available at scm.oas.org/doc_public/ENGLISH/HIST_09/CP21665E11.doc [hereinafter Presentation of the Executive Sec'y].

evaluation,¹²¹ 1,137 (69%) petitions awaiting an admissibility decision,¹²² and 515 (31%) matters awaiting a decision on the merits.¹²³ In 2010, its most productive year, the Commission's percentage of merits decisions was lower than the percentage of cases pending in the merits stage (29% of merits decisions versus 31% of cases in the merits stage).¹²⁴ The imbalance in favor of admissibility decisions is helpful for eliminating clearly meritless petitions,¹²⁵ but it further increases the backlog in the time-consuming merits stage and fails to provide redress to victims in enough cases.¹²⁶ For instance, between 2008-2010, the docket of pending petitions and cases (in admissibility and merits stages) grew 27.46%. But the number of cases in the merits stage increased, in the same period, by 31.39%.

Decisions by Year											
Year	Admissibility	Archival	Friendly Settlement	Inadmissibility	Merits	Total	Finished Cases	Percentage of Archival and Inadmissible Cases Compared with Total	Submissions to Court	% Fully Decided	Total Percentages of Archival, Inadmissible, and Fully Decided
1996	8	0	1	6	16	31	55%	19%	4	68%	87%
1997	13	0	1	5	23	42	57%	12%	2	62%	74%
1998	35	26	2	10	25	98	28%	37%	3	31%	67%
1999	26	41	4	5	30	106	32%	43%	7	39%	82%
2000	35	61	13	8	10	127	18%	54%	3	20%	75%
2001	29	47	8	9	4	97	12%	58%	5	18%	75%
2002	38	41	3	6	11	99	14%	47%	7	21%	69%
2003	38	21	11	9	6	85	20%	35%	15	38%	73%
2004	45	19	3	9	4	80	9%	35%	12	24%	59%
2005	53	12	8	16	7	96	16%	29%	10	26%	55%
2006	49	27	10	13	8	107	17%	37%	14	30%	67%
2007	52	14	5	14	4	89	10%	31%	14	26%	57%
2008	51	0	4	10	7	72	15%	14%	9	28%	42%
2009	62	20	4	15	13	114	15%	31%	11	25%	55%
2010	62	55	11	7	4	139	11%	45%	16	22%	67%
Total, Average of Percentages	596	384	88	142	172	1382	22%	35%	132	32%	67%

Even if one takes into account the procedural (archival and inadmissibility) decisions, the percentage of petitions and cases that get decided or struck down from the IACHR's docket is lower than what it was in 1996.¹²⁷ Today, the Commission eliminates 20% fewer cases and

121. Commission's Answers, *supra* note 58, at 16.

122. MAXIMIZING JUSTICE, *supra* note 28, at 27.

123. *Id.*

124. *Id.*

125. *Id.*

126. *Id.*

127. *Id.* at 30.

petitions from its docket than it did fifteen years ago.¹²⁸ Additionally, the Commission now eliminates more cases and petitions through procedural decisions than through decisions on the merits, friendly settlement, or referrals to the Court.¹²⁹ In 1996 the Commission eliminated almost 70% of its cases through friendly settlement, merit, or referrals to the Court compared with approximately 20% through archival and inadmissibility decisions.¹³⁰ In 2010 the proportion reverted to just over 45% through archival and inadmissibility decisions, and a little over 20% in final decisions based on the merits of the case.¹³¹

The Commission explains its focus on the initial stages of petitions as a stepped approach in addressing the backlog.¹³² As the current backlog predominantly lies in the initial phases and given the lack of resources, the Commission needed to concentrate in the stage with the biggest backlog.¹³³ The Commission argues that additional resources could be allocated to other stages once the delay, in its early stages, is more reasonable.¹³⁴

While it is understandable that the Commission needed to start somewhere, and though there may be a higher number of backlogged new petitions or petitions in the admissibility stage, it is questionable whether taking an approach which does not consider the process as a whole will help reduce the overall backlog of the Commission and not simply defer the backlog to later and more time-consuming stages.

Some numbers illustrate the consequences of the Commission's backlog and its focus on the initial stages of the procedure. The IACHR adopted eighty-three reports—the highest number of admissibility reports within one year—in 2010. As of August 30, 2011, there were 1,137 matters awaiting an admissibility decision.¹³⁵ Even if no new petitions were filed, at the 2010 pace, it would take nearly *sixteen years* to fully decide all the admissibility petitions. For the merits decisions, only twenty-six cases were decided on the merits in 2010, but as of August 30, 2011, there were 515 matters awaiting a decision on the

128. HUMAN RIGHTS CLINIC, UNIV. OF TEXAS SCH. OF LAW, MAXIMIZING JUSTICE, MINIMIZING DELAY: STREAMLINING PROCEDURES OF THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS (2011), http://www.utexas.edu/law/clinics/humanrights/work/Maximizing_Justice_Minimizing_Delay_at_the_IACHR.pdf

129. *Id.*

130. *Id.*

131. *Id.*

132. *Id.* at 29. Information provided by current and former members of the Secretariat.

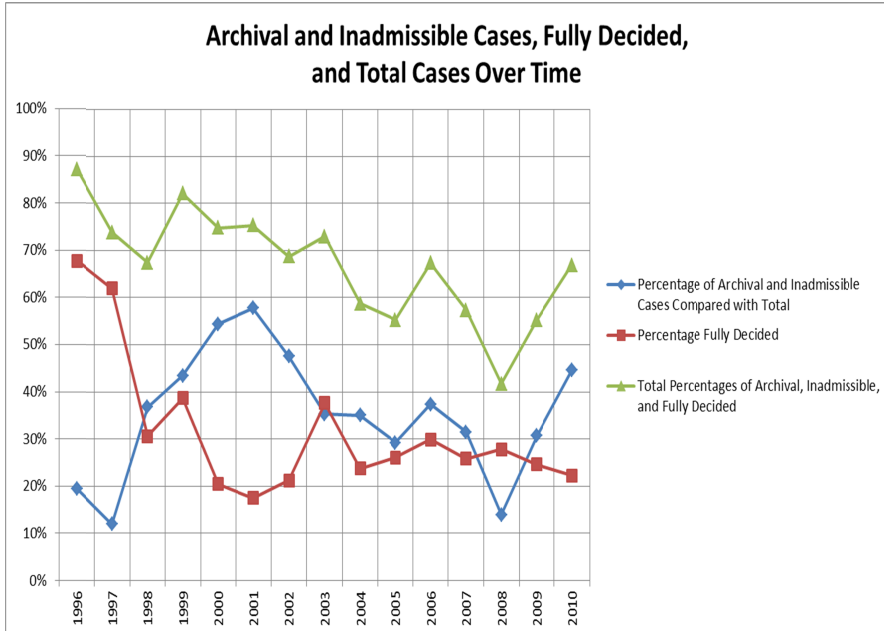
133. Commission's Answers, *supra* note 58, at 5.

134. MAXIMIZING JUSTICE, *supra* note 28, at 29. Information provided by current and former members of the Secretariat.

135. *Id.* at 26.

merits.¹³⁶ At this pace it would take around *twenty years* to clear this backlog without addressing any new cases.

Inevitably, the backlog correlates to longer wait times for petitioners. It takes, on average, over four years for a petition to receive a decision on admissibility and almost two and a half more years for a merits decision, leaving petitioners with an average wait time of *six and a half years* for a merits decision.¹³⁷ The Commission self-identified an average of six years for a final decision.¹³⁸ If a case is sent to the Court in lieu of a merits decision, the wait time is even longer.¹³⁹



136. *Id.*

137. *Id.* Our numbers are similar to other studies that focused on shorter periods of time. Basch et al. concluded that the average duration of proceedings, from when the petitions enter into the system until their resolution, is approximately seven years and four months. The friendly settlements agreements have a shorter average duration than the processes completed through Court rulings or the Commission's final reports on the merits. See Fernando Basch et al., *The Effectiveness of the Inter-American System of Human Rights Protection: a Quantitative Approach to its Functioning and Compliance with its Decisions*, 7 Sur Int'l J. on H.R. 9, 26 (2010). Ramos, based on the Commission's 2009 Annual Report, included a chart to illustrate how long it takes the Commission from the time it receives a petition to the time it decides on the merits. His chart gives an average of 9.3 years. See Ramos, *supra* note 24, at 166. CEJIL calculated the average processing time of the cases submitted by the Commission to the Court in 2006 and 2007. Those cases had an average processing time of 8.2 years from the filing of the complaint to the Commission to its submission to the Court, and an average duration of 4.8 years from the filing of the complaint to the admissibility report. Center for Justice and International Law (CEJIL), *Observations regarding the proposal for the IACHR Rules of Procedure*, 10 (June 30, 2009), available at <http://cejil.org/en/categoria/tipo-de-documento/institucional> [hereinafter CEJIL Observations].

138. STRATEGIC PLAN PART I, *supra* note 105, at 20.

139. MAXIMIZING JUSTICE, *supra* note 28, at 30.

Moreover, the average length has increased for all four types of decisions in the period covered by our database (1996-2010).¹⁴⁰ The average wait time for an admissibility decision was over four years for decisions published between 2002 and 2010, but just under three years in the period between 1996-2001. Our data suggests that the changes in the Commission's Rules in 2000 increased the time of adjudication. Similarly, for merits decisions, the average number of years that a petitioner has to wait is now higher than it was prior to 2008, the year the Executive Secretariat underwent major restructuring.¹⁴¹ As expected, our database was favorable to the Commission as it reflects only published decisions and not those petitions and cases waiting in the docket. According to IACHR's data, the current average length of proceedings for petitions in the admissibility stage awaiting a decision is seventy months (6.83 years).¹⁴² Our data showed 4.02 years. The IACHR identified the average length of proceedings for cases in the merits stage awaiting a decision as eighty-six months (7.2 years).¹⁴³ This again is longer than the 6.51 years that our data suggests.¹⁴⁴

Average Years for Commission's Decisions						
	Admissibility	Archival	Inadmissibility	Friendly Settlement	Merits	Total
Count of petitions	596	69	136	86	172	1,059
Average Years	4.02	10.90	4.78	6.16	6.51	5.14
Std Dev Year	2.86	4.82	2.98	3.37	3.29	3.63
Median Years	3.25	8.04	4.40	5.87	5.96	4.29
Max Years	20.92	19.85	14.60	20.56	14.67	
Min Years	0.39	2.36	0.31	0.99	1.29	

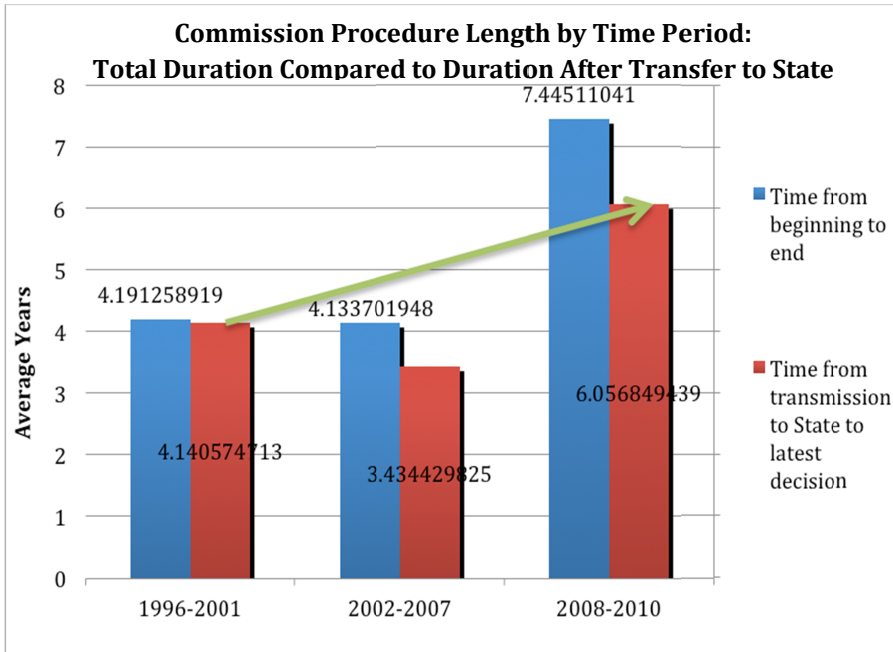
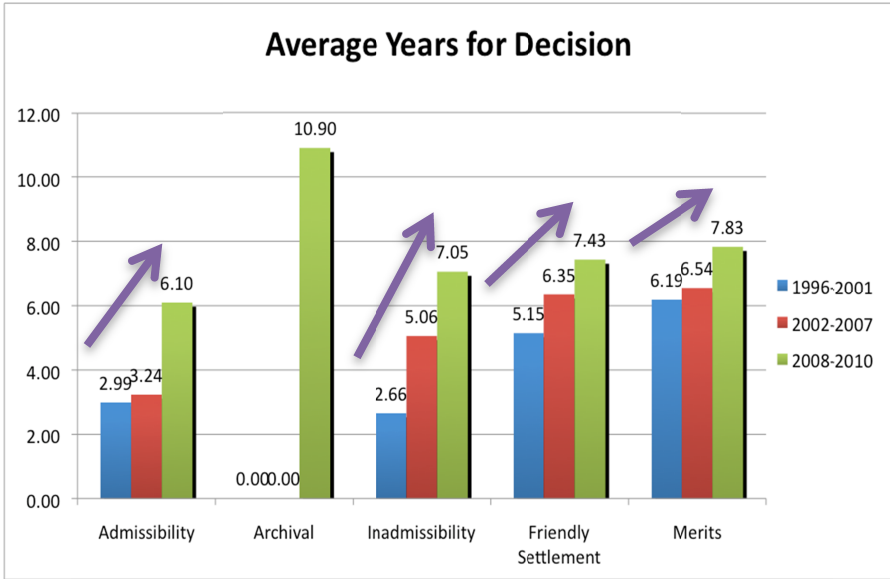
140. The Clinic excluded archival decisions, as they were made public only in the last two years.

141. MAXIMIZING JUSTICE, *supra* note 28, at 32.

142. *Id.*

143. *Id.*

144. *Id.* at 35.



Of course, if the Commission is dealing with its backlog of new petitions, the length of the procedure will increase because the IACHR will be deciding petitions and cases that have already been waiting for years.

Also, the new practice of addressing petitions and cases in chronological order rather than by any other measure of priority may contribute to the increase in wait time. This is because the Commission is resolving cases that have already been delayed for some time. Nevertheless, the higher average of wait time cannot be entirely attributed to this shift in practice. The upward trend in wait time began before the Commission started to deal with backlogged petitions and the stronger focus on a chronological order.¹⁴⁵

To account for the disparity of dealing with older backlogged petitions we also measured the time between transmission of a petition to the State and the time of the Commission's decision on the merits. By some doing, we are able to control the impact of the reduction of backlog of new petitions (as done by the Registry) by analyzing the average length of the proceeding. In the period from 1996 to 2001, an average of over 4.1 years elapsed from the time a petition was transmitted to a State to the time the Commission decided the case on the merits. From 2002-2007, that time decreased to just under three-and-a-half years.¹⁴⁶ However, in the period from 2008-2010, an average of six years elapsed from the petition's filing with the State to the case's merits decision.¹⁴⁷ In other words, prioritizing chronological order necessarily means the average wait time will increase. But this change does not entirely account for all increases in adjudication times for petitions and cases, as the Commission does not follow a strict chronological order.¹⁴⁸

145. MAXIMIZING JUSTICE, *supra* note 28, at 45.

146. *Id.* at 33. During that period however, it still took an average of just over four years from the filing of a petition to the decision on the merits. Thus, more time was spent during the initial processing and the overall average time did not decrease.

147. *Id.* at 33-34.

148. *Id.*

Court: Average Time by Period (Years)			
Year Period	Average of Years from Filing of Petition with Commission to Filing with Court	Average of Years from File Date with Court to Merits	Average of Years from Beginning to End
1989-1996	2.53	2.38	6.93
1996-2001	3.09	2.36	6.57
2002-2007	5.80	1.68	7.67
2008-2010	7.37	1.49	9.08

The length of adjudication for cases in the Court further increases wait times.¹⁴⁹ Cases before the Court take an average of almost eight years from the time the petition is filed with the Commission to the Court's final resolution.¹⁵⁰ Cases spent an average of one year and nine months in the Court after an average of more than five years and nine months in the Commission.¹⁵¹ The time that a petition or case takes to be processed by the Commission is much longer than the time it takes for a case to be processed by the Court. Because of the Commission's larger caseload and additional procedural stages, an increased amount of time for the Commission to dispose of its cases is expected.¹⁵² Also, the Commission carries out many more functions than the Court does.¹⁵³ Thus, not all the Commission's resources—be it time, funding or staff—can be allocated to individual complaints in the same manner as the

149. *Id.* at 35.

150. *Id.* The length of time is underestimated because in some cases, the final disposition is not the judgment itself but an interpretation of the Court's judgment, pursuant to Article 68 of the Court's Rules of Procedure. It is possible to also add the time that the case spends in the supervision stage until there is full compliance with the Tribunal's decision. We decided not to count those years, as we were only interested in the time it takes for the Inter-American bodies to rule on the merits of a claim.

151. *Id.*

152. *Id.*

153. *Id.* As described in section II, the Commission carries promotional, diplomatic and monitoring activities. The Court performs only adjudicative and limited advisory functions.

Court can do.¹⁵⁴ Nevertheless, since the Commission is a quasi-judicial body with more relaxed evidentiary rules, more general flexibility, and more negotiating powers, adjudication should take less time in the Commission than in the Court.¹⁵⁵ The differences do not provide easy explanations to the fact that the time the Commission takes to process a case has consistently increased while the time for procedures in the Court has been in steady decline.¹⁵⁶

There is no significant difference in the time spent in the Commission's proceedings between those cases that were finally decided by the Commission and those that were eventually decided by the Court.¹⁵⁷ The Commission disposed of cases submitted to the Court an average of nine months faster than those that were never submitted to the Court.¹⁵⁸ This discrepancy can be explained by the way we measured time periods and by the process of the publication of merits reports.¹⁵⁹ The database records the date of *publication* of merits reports by the Commission, rather than the initial, unpublished adoption of the merits report.¹⁶⁰ The time between the adoption of preliminary merits reports and publication of final merits reports is substantial. The Commission is required to first grant time to the State to comply with the Commission's preliminary merits report before adopting a final merits report; and then, after granting additional time to the State, to decide its publication.¹⁶¹

154. *Id.*

155. *Id.*

156. HUMAN RIGHTS CLINIC, UNIV. OF TEXAS SCH. OF LAW, MAXIMIZING JUSTICE, MINIMIZING DELAY: STREAMLINING PROCEDURES OF THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS 38 (2011), http://www.utexas.edu/law/clinics/humanrights/work/Maximizing_Justice_Minimizing_Delay_at_the_IACHR.pdf.

157. *Id.* at 35–36.

158. *Id.* at 36.

159. *Id.*

160. See American Convention, *supra* note 7, arts. 50–51. See also Commission Rules of Procedure, *supra* note 51, arts. 45, 47.

161. MAXIMIZING JUSTICE, *supra* note 28, at 36. See also Commission Rules of Procedure, *supra* note 51, arts. 47.1–47.3.

V. PROCEDURAL AND ADMINISTRATIVE REFORMS AND THEIR IMPACT
ON THE EFFICIENCY OF THE COMMISSION¹⁶²

In the last decade, the Commission has enacted several major procedural, administrative and technological changes, some of which were specifically designed to deal with the backlog and procedural delays.¹⁶³ Particularly, the Commission twice made extensive rule changes that drastically altered the structure of the proceedings.¹⁶⁴

A. 2000 Rules of Procedure Reforms

The most extensive rule revision occurred in 2000. The change divided the procedure into admissibility and merits. Reducing the backlog and timely resolution of petitions and cases were not explicit goals of these amendments.¹⁶⁵ By splitting the admissibility phase and the merits phase into two separate stages, the overall impact of the 2000 changes to the duration and backlog was negative.¹⁶⁶ Doing so shifted the

162. In addition to the procedural reforms and the organizational changes explained in the text, in 2011, the Commission published a strategic plan, which included goals through the year 2015. *Maximizing*, *supra* note 28, at 59. (citing ORGANIZATION OF AMERICAN STATES, INTER-AM. COMM'N H.R., STRATEGIC PLAN 2011-2015: PROGRAMS AND ACTIONS PLANS (2011) [hereinafter STRATEGIC PLAN PART II]). The plan establishes concrete goals and specific targets, including reducing the backlog and length of adjudication as one of its priorities. "According to the Commission's estimates, in order to achieve the goals in the plan, the budget must increase by over two and a half times between now and 2015." *MAXIMIZING JUSTICE*, *supra* note 28, at 59-61. The goal of the IACHR is that by December 31, 2013, no petition presented prior to December 31, 2010 should be under review." *Id.* at 60. The Strategic Plan aims to eliminate the backlog in the admissibility and merits phases by 2015. *Id.* During this period, the Sections would have to quadruple their production capacity for the production of admissibility reports, and in the merits phase, the Sections would have to increase their production capacity six-fold. *Id.* at 59-61. The Strategic Plan demonstrates that the Commission is moving in the right direction and that it is committed to eliminate its backlog and speed up the process. *Id.* at 61. However, in analyzing the likelihood of actually reaching these goals, the Strategic Plan falls short as it relies heavily on increased funding but does not include alternative plans if the funds do not materialize. *Id.* The Commission recognizes that its main strategy is receiving additional funding by stating that, "if the projected resources do not materialize or if only a portion of them materialize, the projection under this plan will have to be revisited." STRATEGIC PLAN PART II, at 78. The Strategic Plan also fails to recognize that without significantly changing how petitions and cases are adjudicated, there is little reason to believe that the 2015 goals will be achieved even with additional funds. *MAXIMIZING JUSTICE*, *supra* note 28, at 62. The feasibility of these objectives also fails to consider capacity limitations of the staff, and overall lack of time of both Commissioners and staffers to consider the new number of intended reports without transforming the IACHR into a permanent body. David C. Steelman *What Have We Learned About Court Delay, "Local Legal Culture," And Caseload Management Since The Late 1970s?* 19 JUST. SYS. J. 145 (1997) at 159 (stating that a court may reach a point of "saturation" after which other steps need to be taken).

163. *MAXIMIZING JUSTICE*, *supra* note 28, at 47.

164. *Id.*

165. *Id.*

166. *Id.*

concentration of resources to the preliminary stages of the procedure and lengthened its overall duration.¹⁶⁷

Before 2000, the Commission generally ruled on both the admissibility and merits of a case in a single joint decision.¹⁶⁸ In the new Rules of Procedure, the Commission created a two-stage process, requiring a separate report deciding whether petitions met the admissibility requirements.¹⁶⁹ The Rules included a timeline for the submission of admissibility considerations that did not allow any extensions beyond three months, but they did not stipulate the consequences of the State's failure to respond.¹⁷⁰

The effect of this change was felt immediately. Between 1996 and 2001, the Commission adopted 146 independent admissibility determinations; between 2002 and 2007, that number almost doubled to 275; and between 2008 and 2010 the IACHR adopted 175.¹⁷¹ Those increased numbers were not in addition to merits decisions, but to the detriment of them. The two-stage procedure shifted the concentration of the Commission decisions from joint admissibility and merits decisions to admissibility decisions.¹⁷² Fifty-four percent of the decisions adopted by the IACHR between 1996 and 2001 were admissibility decisions and 46% were final decisions on the merits (including friendly settlement, merits decisions, and cases filed with the Court).¹⁷³ Over the next eight years, the percentage of decisions on the merits and friendly settlements dropped to 17%, and 83% became admissibility or archival decisions.¹⁷⁴ If we add the cases submitted to the Court, 32% were fully decided while 68% of decisions were admissibility or archival.¹⁷⁵

167. *Id.*

168. See MONICA PINTO, *LA DENUNCIA ANTE LA COMISIÓN INTERAMERICANA DE DERECHOS HUMANOS* 83 (Editores del Puerto 1994).

169. In part, the Commission was responding to the requests formulated by the States in the previous years. See Resolution AG/RES. 1701, *supra* note 103, art. 6.b (recommending the Commission 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").

170. Commission Rules of Procedure, *supra* note 51, art. 30.4.

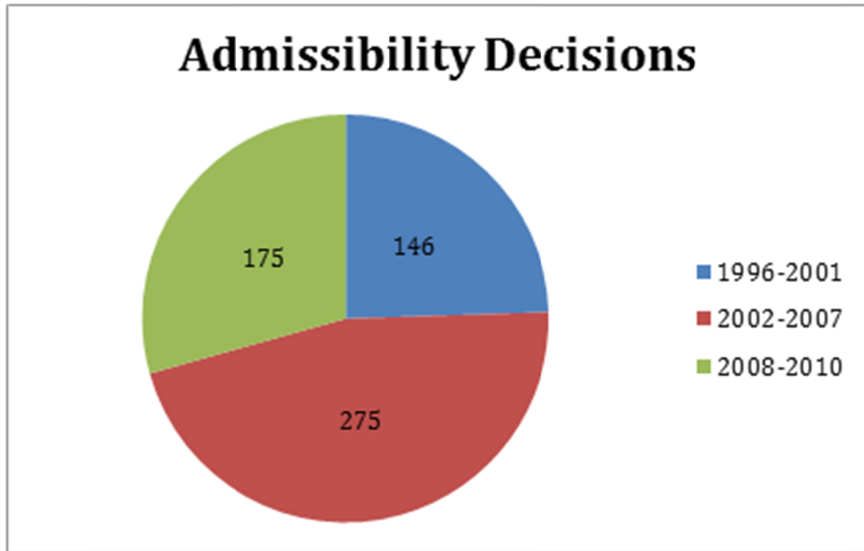
171. MAXIMIZING JUSTICE, *supra* note 28, at 47–48.

172. *Id.* at 49.

173. *Id.*

174. *Id.*

175. *Id.*



Several provisions in the 2000 Rules allowed the Commission to speed up the admissibility process, particularly in urgent and serious cases. For example, Article 30.4 and 30.7 allowed the Commission to request the State to present its response on the admissibility and the merits of the matters within a reasonable time (rather than only on the admissibility and within three months).¹⁷⁶ Article 37.3 permitted the Commission to open a case and defer its treatment of admissibility in serious and urgent cases until the debate and decision on the merits.¹⁷⁷

In the merits phase, petitioners are allowed to submit additional observations. If a State does not respond when the Commission transmits the case to the State for observations, then the petitioner's facts are presumed true.¹⁷⁸ The Commission also included specific rules on gathering testimonies from witnesses and the way that evidence is to be presented and preserved so that it could be admissible later in the Court.¹⁷⁹ Additionally, this phase included clearer guidelines regarding the friendly settlement stage, imposing a greater obligation on the Commission to facilitate friendly settlements and making them available any time during the processing of a petition or case.¹⁸⁰

176. See Commission's Rules of Procedure, *supra* note 51, arts. 30.4, 30.7.

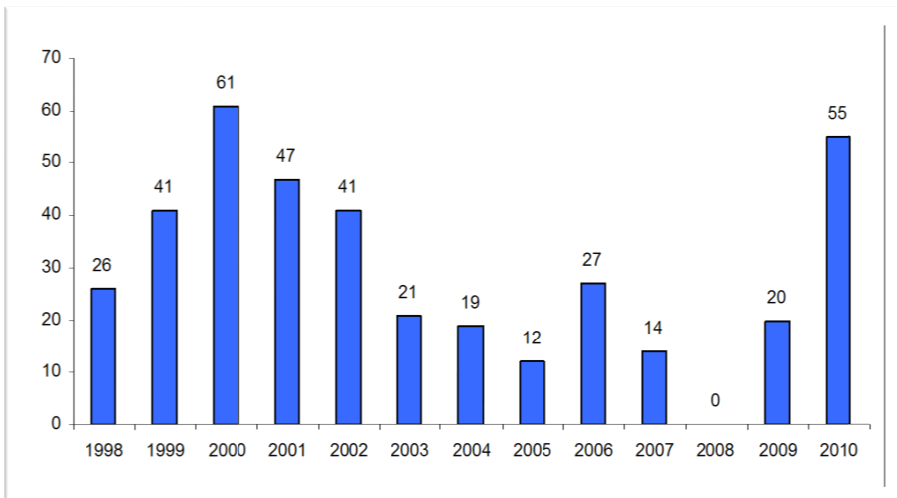
177. *Id.* art. 37.3.

178. *Id.* art. 38.

179. *Id.* art. 65.

180. Press Release, Inter-Am Comm'n H.R., Conclusion of the 109th extraordinary session, ¶ 13, No. 18/00 (Dec. 8, 2000), available at

The 2000 changes also established a presumption of automatic referral of the case to the Court unless the Commission adopted a majority decision saying otherwise.¹⁸¹ Before this change, there was a presumption of adopting and publishing a final report with recommendations.¹⁸² The Rules also included a clear guideline on the criteria for evaluating whether to refer a case to the Court.¹⁸³ As a result, the number of cases submitted to the Court increased from twenty-four cases between 1996 and 2001 (an average of four per year), to seventy-one cases between 2002 and 2007 (an average of more than eleven per year).¹⁸⁴ This trend seems to be continuing. In 2008, the Court decided sixteen cases, seventeen in 2009, nine in 2010 and twelve in 2011.¹⁸⁵ This change created additional work for the Commission, as it had to continue its involvement in multiple cases now litigated in front of the Court.



To deal with this sudden increase in caseload, the Court combined its preliminary objections, merits, and reparations decisions into a single judgment—exactly the opposite approach taken by the Commission.¹⁸⁶ As a result of this and other changes, the Court has been able to reduce the time it takes to hear a case, even while its caseload has increased.¹⁸⁷

<http://www.cidh.oas.org/Comunicados/English/2000/Press18-00.htm>.

181. *Id.* ¶ 16.

182. MAXIMIZING JUSTICE, *supra* note 28, at 50.

183. *Id.*

184. *Annual Report 2010*, *supra* note 106.

185. *Jurisprudence: Judgment and Decisions*, INTER-AM CT. H.R., <http://www.corteidh.or.cr/casos.cfm> (last visited Sept. 27, 2011).

186. MAXIMIZING JUSTICE, *supra* note 28, at 74.

187. *See id.* at 38, 74.

When the Court issued separate decisions on preliminary objections, merits, and reparations, it took an average of two years and two months for a case to be fully resolved by the Court.¹⁸⁸ Now that the Court has combined the decisions it takes an average of just over one year and seven months.¹⁸⁹ Although the average time from when a petition is filed with the Commission to when it is decided by the Court increased by one year and five months after the Court combined its decisions, that increase actually represents an increase in the Commission's process, not the Court's.¹⁹⁰ After the Court changed its procedure to combine decisions (and the Commission divided decisions at the same time), the average time that a petition or case spent in the Commission more than doubled, while the average time a case spent with the Court decreased.¹⁹¹

Finally, the 2000 changes included, for the first time, a follow-up mechanism to monitor the implementation of the recommendations of the Commission included in its merits or friendly settlement reports.¹⁹²

B. 2009 Rules of Procedure Reforms

In 2009, the Commission adopted a second set of revisions to its Rules of Procedure with the stated goals of enhancing "participation by victims, guarantees to harmonize procedural participation of the parties and enhance the publicity and transparency of the system."¹⁹³ Again, reducing the backlog or speeding-up the process were not official goals of the reforms.

The reforms granted petitioners and States more time to submit additional observations on the merits.¹⁹⁴ While the additional time may be necessary, it is usually used as a delaying mechanism by States and as such, is antithetical to the goal of reducing the length of the Commission's procedure, unless this extension is aimed at ensuring timely substantive observations. Other provisions included a limitation

188. *Id.* at 74.

189. *Id.*

190. *Id.*

191. *Id.*

192. Commission Rules of Procedure, *supra* note 51, art. 46.

193. Press Release, Inter-Am. Comm'n H.R., CIDH Publishes Its New Rules of Procedure, No. 84/09 (Dec. 9, 2009), available at <http://www.cidh.org/Comunicados/English/2009/84-09eng.html>.

194. Commission Rules of Procedure, *supra* note 51, arts. 37.1–37.2.

on when challenges to admissibility could be submitted¹⁹⁵ and a provision allowing the receipt of testimony during on-site visits.¹⁹⁶

The Rules also included clear provisions for archiving cases.¹⁹⁷ Archiving petitions and cases reduces the backlog of the Commission because it eliminates inactive complaints from the docket of the Commission. Importantly, the Commission has begun to publish information on archival decisions only in the past two years.¹⁹⁸

Per the 2009 changes, the Commission may suspend the time limit to refer a case to the Court if the State in question is willing to implement the Commission's recommendations and the State consents to the suspension.¹⁹⁹ This provision, which reflects the previous unregulated practice of the IACHR, could represent a tension between the efficiency of the System and its effectiveness.²⁰⁰ Efficiency goes down by lengthening the procedure while the Commission waits to see if the State implements its recommendations.²⁰¹ At the same time, compliance with the Commission's decisions may increase because this provision offers the States an alternative to submission to the Court if the State complies with the Commission's recommendations.²⁰²

In addition, the 2009 reforms continue to elaborate on the functions of Working Groups. According to Articles 15 and 35, a Working Group on Admissibility shall be established to study, between sessions, the admissibility of petitions and make recommendations to the plenary.²⁰³

In 2009, the Commission and the Court changed the way the Commission transfers a case to the Court.²⁰⁴ Prior to this, the Commission had to write a full legal brief with all legal arguments and evidence in order to submit a case to the Court. Now, when transferring a case to the Court, the Commission must only submit the merits report, the observations on the State's answer to the report, and the reasons for submitting the case to the Court.²⁰⁵ The Court has also reduced the Commission's role as advocate in Court proceedings and has given it

195. *Id.* art. 30.6.

196. *Id.* art. 39.

197. *Id.* art. 42.

198. MAXIMIZING JUSTICE, *supra* note 28, at 53.

199. Commission Rules of Procedure, *supra* note 51, art. 46.

200. MAXIMIZING JUSTICE, *supra* note 28, at 53.

201. *Id.*

202. *Id.* at 54.

203. Commission Rules of Procedure, *supra* note 51, arts. 15, 35.

204. *Id.* art. 74.

205. *Id.*

more of a neutral position.²⁰⁶ This change shifts the emphasis to the petitioner and the State as parties to the case.²⁰⁷ The Commission, however, still presents final observations after both parties have made oral arguments.²⁰⁸

It is too early to judge whether the 2009 amendments will have an impact on the backlog and delays at the Commission level. If the Commission does not take a prominent role in the litigation of cases at the Court, if it is not required to prepare an additional brief to submit the case to the Tribunal, and if its role in the public hearings is more limited, it is possible that the Commission will be able to re-allocate some of its resources and time to deal with its backlog rather than to litigate in front of the Court.

As previously stated, the Commission recently adopted a new set of revisions to its Rules. Again, those changes do not pursue any explicit measures to speed up the process nor to reduce the Commission's backlog. In fact, the revisions extend some of the deadlines for the submissions of information. However, the 2013 revisions provide some welcome clarity on some criteria, such as when the Commission may expedite the evaluation of a petition;²⁰⁹ criteria for joining the admissibility and merits stages;²¹⁰ reasons for allowing the revision of an archival decision²¹¹ or considerations for the temporal suspension of the time limit to refer the case to the Court.²¹²

C. Changes in the Executive Secretariat

The Executive Secretariat of the IACHR is a "specialized unit of the General Secretariat of the Organization [that. . .] shall be provided with the resources required to accomplish the tasks assigned to it by the Commission."²¹³ As a permanent body (as opposed to the part-time nature of the Commissioners' positions), the Executive Secretariat plays a fundamental and largely discretionary part in the Commission's work processing individual petitions.²¹⁴ The Executive Secretariat drafts all the petitions, case reports, and applications to the Court. Also the

206. INTER-AM. CT. H.R., Statement of Motives for the Reform of the Rules of Procedure, 2, available at http://www.corteidh.or.cr/reglamento_eng.cfm.

207. *Id.*

208. *Id.* at 3.

209. See Commission Rules of Procedure, *supra* note 51, art. 29.2.

210. See *id.* art. 36.3.

211. See *id.* art. 42.

212. See *id.* art. 46.

213. See *id.* art. 21.1.

214. David Harris, *Regional Protection of Human Rights; The Inter-American Achievement*, THE INTER-AM. SYS. OF H.R., 19 (David Harris and Stephen Livingstone eds., Oxford, 1998).

Secretariat is responsible for administering the process, as it receives and processes the correspondence on petitions and cases; the Secretariat requests parties to provide any information it deems relevant, fixes the deadlines for those submissions, and grants extensions to receive those responses.²¹⁵ Crucially, the Commission has delegated to the Executive Secretariat the power to revise new complaints and to reject those that do not meet the *prima facie* normative requirements.²¹⁶

Since 2001, the Secretariat has undergone two phases of reform, with the goal of maximizing its output and better utilizing its limited resources.²¹⁷ In the first phase, the main priority was to improve standardization and coherence within the legal work of the Commission.²¹⁸ The Executive Secretariat created advisory groups that assisted in the review of initial petitions and in the assessment of requests for precautionary measures to ensure consistent standards across States. In 2004, the Executive Secretariat created the litigation or Court group responsible for supporting the Commission's participation in Court proceedings.²¹⁹

The second phase of reorganization specifically targeted the efficiency of the case system.²²⁰ In 2007, the Executive Secretariat created four regional groups that consolidated the country desks.²²¹ Each regional group is responsible for handling outreach, observations, and on-site visits in their respective regions and States, as well as the processing of individual petitions, including drafting reports.²²² This allowed for the even distribution of petitions and cases across regions, giving each group between 300 and 400 ongoing petitions and cases.²²³ This arrangement enabled, in theory, attorneys within each regional group to specialize based on their seniority. Junior professionals were responsible for admissibility reports and senior professionals for merits reports.²²⁴ A senior specialist would coordinate and oversee the regional group.²²⁵ The regional sections would process petitions and cases, assess the observations by the parties, determine the need for additional

215. Commission Rules of Procedure, *supra* note 51, art. 13; *see also id.* arts. 30, 37.

216. *Id.* arts. 26–27, 29.

217. Comm. on Jur. and Pol. Affairs, Permanent Council of the Organization of American States, *Reorganization of the Executive Secretariat of the Inter-American Commission on Human Rights*, CP/CAJP-2693/09 rev. 1 (Feb. 20, 2009) [hereinafter *Reorganization*].

218. *Id.*

219. MAXIMIZING JUSTICE, *supra* note 28, at 55.

220. *Reorganization*, *supra* note 217.

221. *Id.* at 1–2.

222. *Id.* at 1.

223. *Id.*

224. *Id.*

225. *Id.*

information, and recommend the convening of hearings when necessary.²²⁶ These sections would also follow up on recommendations made by the Commission.²²⁷

The Commission's Secretariat created the Registry in March 2007, in order to address the large backlog of new petitions.²²⁸ As of October 2008, the Secretariat transferred to this unit all of its new petitions waiting to be reviewed—a total of 4,471 petitions.²²⁹ Currently, the Registry reviews all new petitions in addition to the backlogged new petitions in chronological order.²³⁰ Thanks to additional funding from external sources to create the Registry, the Commission hired new staff and reallocated personnel from other stages of the case system process. The Commission's plan was to reduce the delay in the initial stage by concentrating resources in the Registry for the first three years, and then once a more reasonable delay was achieved, the resources would be allocated elsewhere.²³¹

The Secretariat has recently created the Friendly Settlement Group, a specialized unit that will support Commissioners assigned to cases where the parties have agreed to enter into friendly settlement procedures.²³² The Group will be in charge of tracking and facilitating the process, preparing the necessary reports, and providing general assistance to the Commissioners.²³³ Unfortunately, the Commission was only able to supply "rough estimates" of seventy to one hundred cases and petitions currently in friendly settlement negotiations.²³⁴ This raises concerns for planning and managing the status of each case and petition. It is particularly problematic for the Commission when forecasting the need for staff and resources.²³⁵ Friendly settlements increase efficiency

226. Comm. on Jur. and Pol. Affairs, Permanent Council of the Organization of American States, *Reorganization of the Executive Secretariat of the Inter-American Commission on Human Rights*, CP/CAJP-2693/09 rev. 1 (Feb. 20, 2009).

227. The Executive Secretariat also created a protection group to deal with precautionary measures. The protection group studies requests for precautionary measures and analyzes their necessity before making the pertinent recommendations to the Commission. Additionally, it handles the processing of those precautionary measures and follows up with the petitioner and the State after the measures have been requested.

228. MAXIMIZING JUSTICE, *supra* note 28, at 56.

229. *Id.* at 20.

230. *Id.* at 56.

231. *Id.*

232. *Id.* at 59.

233. *Id.* at 60.

234. HUMAN RIGHTS CLINIC, UNIV. OF TEXAS SCH. OF LAW, MAXIMIZING JUSTICE, MINIMIZING DELAY: STREAMLINING PROCEDURES OF THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS 60 (2011), http://www.utexas.edu/law/clinics/humanrights/work/Maximizing_Justice_Minimizing_Delay_at_the_IACHR.pdf

235. *Id.*

by dealing with cases (or petitions) at earlier stages. Our data indicates that the average time between filing and settlement approval was almost five months shorter than the average time between filing and merits decisions, and almost two years shorter than the average time between filing and receiving a decision from the Court.²³⁶ Additionally, friendly settlements increase the effectiveness of the Commission. In a study of compliance with decisions in the Inter-American System, 54% of friendly settlements had total compliance by States, while only 29% of Court decisions and 11% of Commission reports were fully complied with.²³⁷ Additionally, like any method of alternative dispute resolution, friendly settlements can be more flexible than Commission and Court decisions.²³⁸

The Secretariat has also implemented a variety of technological changes. In 2002 the Secretariat created the Petition and Case Management System (PCMS).²³⁹ The PCMS is an electronic database that tracks the progress of petitions and cases by making an electronic record for every procedural step, starting with the submission of a petition.²⁴⁰ The PCMS standardizes all of the communications between the Commission and the parties in petitions or cases by producing pre-determined letters.²⁴¹

In May 2010 the Secretariat began using an electronic Document Management System (DMS) to track and file documents in the same way that it manages petitions and cases.²⁴² The DMS digitizes and registers documents filed by either a party or the Commission, and it links the documents to the appropriate petition or case.²⁴³ The DMS eliminates the need to use paper by creating a fully electronic file for each petition or case, and by facilitating access to the documents within each file. The DMS facilitates oversight and monitoring by giving managers electronic access to pertinent documents for each stage of a petition or case.²⁴⁴ The DMS is limited to petitions and documents filed

236. *Id.*

237. Basch, *supra* note 137.

238. Permanent Council of the Organization of American States, Special Working Group to Reflect on the Workings of the IACHR With a View to Strengthening the IAHRs, OEA/Ser.G GT/SIDH/INF 41/11 (Dec. 2011) (presentation by the Executive Secretariat of the IACHR on “Friendly Settlements”).

239. MAXIMIZING JUSTICE, *supra* note 28, at 57.

240. *Id.*

241. *Id.*

242. *Id.* at 58.

243. *Id.*

244. *Id.*

after June 2010, and there are currently no plans or resources to digitize earlier-filed documents.²⁴⁵

The Executive Secretariat hopes to implement a “user portal” (“PPP”) that would initially allow States and parties to monitor the progress of their petition or case and view related documents.²⁴⁶ The eventual goal is to provide all petitioners and States access to information in the database that relates to their petition or case.²⁴⁷ The PPP offers the possibility of digitally notifying petitioners and States of IACHR decisions.²⁴⁸

The Secretariat also has a process whereby petitions can be submitted online.²⁴⁹ After registering with the Commission’s website, petitioners can complete a petition by filling out the online form.²⁵⁰ Upon submitting this form, petitioners immediately receive an automated follow-up email that simultaneously confirms the receipt of the electronic petition and requests the petitioner to mail a signed copy of the form.²⁵¹ There are no public records of the number of new petitions submitted online.²⁵²

245. HUMAN RIGHTS CLINIC, UNIV. OF TEXAS SCH. OF LAW, MAXIMIZING JUSTICE, MINIMIZING DELAY: STREAMLINING PROCEDURES OF THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS 58 (2011), http://www.utexas.edu/law/clinics/humanrights/work/Maximizing_Justice_Minimizing_Delay_at_the_IACHR.pdf

246. *Id.*

247. *Id.*

248. *Id.*

249. *See* Petition Form, Inter-Am. Comm’n H.R., *available at* https://www.cidh.oas.org/cidh_apps/instructions.asp?gc_language=E.

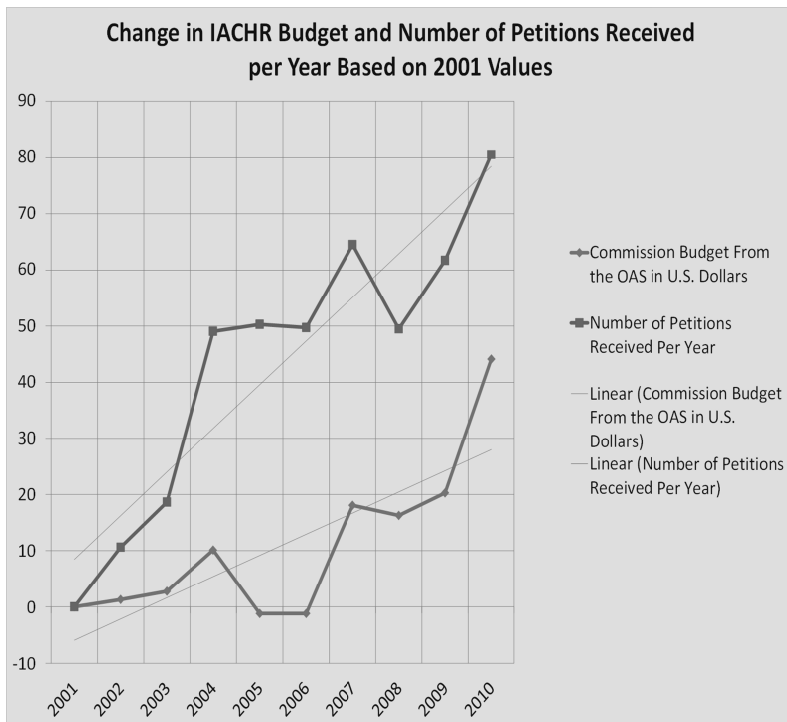
250. *Id.*

251. *See* Register, Inter-Am. Comm’n H.R., *available at* https://www.cidh.oas.org/cidh_apps/register.asp.

252. MAXIMIZING JUSTICE, *supra* note 28, at 58. However, the Commission’s answers have provided its calculation. As of August 30, 2011, of a total of 1,030 petitions received, 308 have been received through the online formula (33%). The Commission estimates through a sampling of 100 consecutive petitions from which online petitions were withdrawn, that 37 were presented by e-mail. Using the Commission’s own formula, they estimate this to be 37% of petitions being received through e-mail translating to, “roughly 55%” of petitions received during the year being through electronic means. *Id.*

VI. ADDITIONAL EXPLANATIONS FOR THE CURRENT SITUATION

Several additional contributing factors explain the current backlog and delays. The main problem is a lack of funding. Specifically, the OAS has not provided a proportional allocation of additional resources to match the increased demand of new petitions, new mandates by the OAS, and growing tasks carried out by the IACHR.²⁵³ The OAS does not appear to be interested in securing proper funding for its main human rights body, so it is easy to understand the Commission's difficulty dealing with petitions and cases in an efficient manner. The OAS is responsible for creating a situation beyond the Commission's control.



The underfunding of the Commission is a permanent and structural problem that has affected the IACHR from its very first years of operation.²⁵⁴ The Commission has continually tried to deal with its

253. *Id.* at 21–25.

254. *Id.* at 21. In 1970 it was said that the Commission's "small budget is a . . . substantial limit on its autonomy. . . . [The] limited budget restricts the Commission's ability to hire specialized personnel and makes it difficult to engage in special operations". ANNA SCHREIBER, *THE INTER-AM'N COMM'N ON H.R. 42* (Leiden: A.W. Sijthoff, 1970). *See also* Inter-Am.

persistent lack of financial resources by seeking additional external funding.²⁵⁵ Indeed, in 2010 the Commission had a budget of just over \$7 million, with \$3.4 million from donations and \$4 million from the OAS.²⁵⁶

The \$4 million provided by the OAS only represented five of the total OAS 2010 Program Budget.²⁵⁷ The IACHR increased its external funding in 2007 and 2008.²⁵⁸ However, the global financial crisis has had an impact on the Commission's ability to secure external funding. In 2010 member states donated approximately \$500,000 less than in 2009, with the United States reducing its funding by over \$1,000,000.²⁵⁹ In 2010, Canada was the biggest donor followed by the European Union.²⁶⁰

Contributions by member states produce an apparent conflict of interest for the Commission, which must decide cases impartially with respect to those member states.²⁶¹ Also, the funds from outside of the OAS budget are voluntary contributions, which depend on the priorities and financial abilities of funders, two factors that are variable.²⁶² Additionally, outside organizations and governments tend to commit new funds to special projects, rather than the core functions of the Commission, particularly the processing of petitions and cases.²⁶³ These targeted funds have created several political problems to the

Comm'n H.R., *IACHR Annual Report 1976*, OEA/Ser.L/V/II.40, doc. 5, at ch. 1.D (June 7, 1977) ("The work of the Commission has been increasing in volume and in intensity due to the constant increase of denunciations of violations of human rights in various regions in the hemisphere and, as was already pointed out elsewhere, that increase in the work load has not been accompanied by a proportional enlargement of the means for handling it. The Commission still is limited to the staff and resources that it had several years ago.")

255. STRATEGIC PLAN PART I, *supra* note 105, at 61.

256. Financial Resources 2010, Inter-Am. Comm'n H.R., *available at* http://www.cidh.oas.org/annualrep/2010eng/2010.Contributions.to.IACHR_certified.pdf.

257. *Id.*

258. *See* Financial Resources 2008, Inter-Am. Comm'n H.R., *available at* http://www.cidh.oas.org/pdf%20files/Participation%20of%20IACHR%20in%20the%202008%20OAS%20Budget_english.pdf. *See also* Financial Resources 2007, Inter-Am. Comm'n H.R., *available at* <http://www.cidh.oas.org/recursos2007.eng.htm>.

259. *Id.*

260. Financial Resources 2010, *supra* note 258. In 2010, of the \$1,267,500 contributed by Member States, \$748,600 was funded by Canada. The USA contributed the second highest amount, \$400,000, while Colombia contributed \$105,000, and Chile contributed \$10,000. Finally, Costa Rica contributed \$3,900 to the Commission. A large portion of the funding—\$1,154,900—came from observer States, \$700,400 of which came from Spain. The European Commission and other institutions, such as UNICEF and the Inter-American Development Bank, also contributed a significant portion.

261. James L. Cavallaro & Stephanie Erin Brewer, *Reevaluating Regional Human Rights Litigation in the Twenty-First Century: The Case of the Inter-American Court*, 102 AM. J. INT'L L. 768, 783 (2008).

262. *Id.*

263. MAXIMIZING JUSTICE, *supra* note 28.

Commission as it has being accused of focusing only on the agenda and interests of some funders (particularly of some States) and prioritizing only some issues.²⁶⁴ More importantly, as the last couple of years show, this additional funding may not be sustainable.²⁶⁵

As a result of underfunding, the Commission cannot hire the necessary staff.²⁶⁶ Currently the Commission has thirty-seven professionals and eighteen administrative staff.²⁶⁷ Nevertheless, the Executive Secretary has said that “in order to have a healthy and strong system of individual cases that functions [. . .] on a timely basis, a total of 87 professionals and 25 administrative assistants are needed.”²⁶⁸ Moreover, over 50% of the Commission’s staff is currently financed by external cooperation funds.²⁶⁹

In addition to the lack of resources, there are difficulties within the Commission’s process that contribute to the delays and backlog. First, the Commission does not use its online petition system to its full potential. If a petitioner submits an online petition, he or she still must submit a signed paper copy. On some occasions, the Executive Secretariat registers these multiple submissions separately and with inconsistent dates in the Commission’s reports.²⁷⁰ If the petition is

264. See for instance the position of Ecuador. OAS, Permanent Council, Working Group, *Proposals by the Delegation of Ecuador*, Doc. OEA/Ser.G/GT/SIDH/INF.46/11 (Dec. 5, 2011) (proposing that the OAS finance the Commission from its own resources, and until this goal is achieved, the Commission should establish a policy that voluntary contributions it receives cannot be conditioned or earmarked and that the Commission should correct the imbalance of economic and human resources in its rapporteurships). See also OAS, General Assembly, Resolution Results of the Process of Reflection on the Workings of the Inter-American Commission on Human Rights with a View to Strengthening the Inter-American Human Rights System, AG/RES. 1 (XLIV-E/13) corr. 1 (adopted at the plenary session, held on Mar. 22, 2013 and subject to revision by the Style Committee) (inviting member states, observer states, and other institutions to continue making voluntary contributions, preferably not earmarked). See generally, Ruiz-Chiriboga, Oswaldo R., *Is Ecuador That Wrong?: Analyzing the Ecuadorian Proposals Concerning the Special Rapporteurship on Freedom of Expression of the Inter-American Commission on Human Rights*, 20 HUMAN RIGHTS BRIEF 2 (2013), available at <http://ssrn.com/abstract=2034375> or <http://dx.doi.org/10.2139/ssrn.2034375>.

265. MAXIMIZING JUSTICE, *supra* note 28. For instance in 2008, the IACHR received \$5,045,000 in voluntary contributions. Five years later, in 2012, the contributions were reduced to \$3,982,600. In 2011, the voluntary contributions rose to their pick in 2011 amounting \$5,135,200. But in 209 and 2010 they suffered a sharp decrease as they were only \$4,329,800 and \$3,354,700 respectively. See Inter-Am. Comm’n H.R., Financial Resources, ORGANIZATION OF AMERICAN STATES, http://www.oas.org/en/iachr/mandate/financial_resources.asp.

266. *Id.* at 22.

267. Inter-Am. Comm’n H.R., Composition of the IACHR 2010, <http://www.cidh.oas.org/personal.eng.htm>.

268. Presentation of the Executive Sec’y, *supra* note 120, at 7.

269. *Id.* at 5.

270. See, e.g., Jimenez v. Costa Rica, Petition No. 12.136, Inter-Am. Comm’n H.R., Report No. 97/10, ¶¶ 1, 4 (July 12, 2010), available at <http://www.cidh.oas.org/casos/10.eng.htm>. (“On May 12, 1998, the Inter-American Commission on Human Rights received a petition presented by

registered multiple times, then valuable resources are wasted as lawyers may begin to process a petition twice, duplicating the intake process. Even if the petition were not registered twice, the Commission would still need to read all the different and subsequent versions to be sure that they are the same. The advantage of an online system is that the Commission automatically has a digital version of the petition, reducing processing time.²⁷¹ Of course, due to the lack of universal Internet access throughout the Americas, a purely online system cannot for the time being be fully implemented as it would limit access to the IACHR for some people.

The current petition intake system encourages too many petitions that cannot be processed. Information on how to file a petition is publicly available in a new brochure and on the Commission's website; however, it is limited to the Rules, contains some legalistic explanations, and does not provide enough specific examples of what could be processed by the Commission and what claims are manifestly outside of its jurisdiction.²⁷² This lack of more user-friendly information may account for some of the almost 90% of petitions summarily dismissed by the Executive Secretariat.²⁷³ The backlog of petitions waiting for initial review largely consists of petitions that are insufficient to pass through the pre-screening phase, preventing legitimate claims from receiving the Commission and its Secretariat's attention.²⁷⁴

The way by which petitioners and States submit information and evidence contributes to the delays.²⁷⁵ Currently, petitioners submit evidence with the initial petition. They may later submit additional information to meet the requirements of the Rules, pursuant to Article 26.2, and may even later submit additional information and evidence in written form or via a hearing, pursuant to Article 30.5.²⁷⁶ Once the case is opened, the petitioner can submit another set of observations and evidence (this time on the merits of the case, under Article 37.1), and later the petitioner has yet one last opportunity to present evidence by

Seguismundo Gerardo Porras Jiménez . . . [t]he petition was received by the IACHR on August 27, 1998.”)

271. MAXIMIZING JUSTICE, *supra* note 28, at 39.

272. *Sistema De Peticiones Y Casos: Folleto Inforativo [System of Petitions and Cases: Information Brochure]*, ORGANIZACIÓN DE ESTADOS AMERICANOS, available at http://www.oas.org/es/cidh/docs/folleto/CIDHFolleto_esp.pdf.

273. MAXIMIZING JUSTICE, *supra* note 28, at 40.

274. In 2010, a total of 1676 petitions were evaluated, with only 275 receiving a decision to process (deemed receivable). *Annual Report 2010*, *supra* note 106, at 33 (chart e).

275. MAXIMIZING JUSTICE, *supra* note 28, at 40.

276. *Id.*

request of the Commission (Article 37.4).²⁷⁷ Likewise, the State presents its information and evidence on admissibility to the Commission after the IACHR initially transfers the petition to the State.²⁷⁸ The State has a second opportunity to present evidence in writing or in hearing,²⁷⁹ a third chance to submit additional observations on the merits,²⁸⁰ and a fourth opportunity to present evidence in a hearing.²⁸¹

In addition to all these explicit procedures afforded by the Rules, the Commission may request or permit States and petitioners to submit information and evidence at multiple stages, beyond what the Rules require.²⁸² For instance, in the *Mateo Bruno* petition, in the admissibility stage alone, petitioners submitted eight briefs and the State filed nine briefs with impressive gaps and silences in between.²⁸³ Petitioners did not submit anything between November 1998 and May 2004 or between July 2004 and May 2010.²⁸⁴ The State maintained silence between February 1999 and September 2010.²⁸⁵

This practice might be encouraged or required by the current backlog. Since petitions and cases are already waiting in docket, requiring early submission of evidence may be seen as arbitrary. Furthermore, after years of delays, part of the information and arguments may become outdated as the factual situation of the case evolves²⁸⁶ and Inter-American case law or practice develops. For instance a law could be adopted or modified, a judicial case may have been opened or concluded, or some State actions could have been carried out.²⁸⁷ On the other hand, allowing late submissions of information and evidence encourages parties to withhold information that could reveal the strengths and weaknesses of their cases. Such withholding might prevent the Commission from drafting reports earlier

277. *Id.*

278. Commission Rules of Procedure, *supra* note 51, art. 30.3.

279. *Id.* art. 30.5.

280. *Id.* art. 30.7.

281. *Id.* art. 65.

282. MAXIMIZING JUSTICE, *supra* note 28, at 40.

283. *Bruno v. Peru*, Petition No. 10.949, Inter-Am. Comm'n H.R., Report No. 69/11, ¶ 5 (2011).

284. *Id.*

285. *Id.*

286. OAS Working Group, *supra* note 15, at 3. The OAS Working Group recommended the Commission to “[p]rovide factual updates on initial petitions that are transmitted to states a considerable time after registration or in the event of long periods of procedural inactivity.” *Id.*

287. For example, in the *Yean and Bossico* case, the State, after three years of procedures in front of the Commission, granted the birth certificates to the children, one of the main complaints in the case. *The Yean and Bosico Children v. Dominican Republic*, Preliminary Objections, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 130, ¶ 25 (Sept. 8, 2005).

and, in some situations, from encouraging parties to enter into friendly settlement negotiations.²⁸⁸

Most of the time, the Commission acts passively, transmitting communications between the parties back and forth rather than managing the process.²⁸⁹ In those communications, the IACHR mechanically requires additional information when both parties may have already submitted all the factual documentation and fully presented their legal arguments.²⁹⁰

The Commission is also inconsistent in its use of rules that may speed up the process.²⁹¹ For example, amended Article 36.3, which allows the Commission to combine the decisions on admissibility and merits in exceptional circumstances, is not consistently applied and it is unclear why it is applied in some cases and not others.²⁹² For example, in 2010, the Commission decided two Brazilian cases in which the Government had not presented any allegations challenging the admissibility of the petitions. Nevertheless, the Commission took absolutely opposite approaches in dealing with those two cases. Petition 12.308 was filed with the Commission on May 22, 2000. Ten months later, on March 22, 2001, petition 12.378 was filed. In both cases, the State did not respond to the petition. On March 17, 2010, the Commission adopted Report 37/10, on the admissibility and merits of petition/case 12.308. In that case, due to the silence of the State, the Commission decided to join the admissibility to the merits of the case. Two weeks earlier, on March 3, 2010, the Commission declared Petition 12.378 admissible. Even though the State was equally silent in this petition, the Commission did not join the admissibility to the merits without explaining this inconsistency.²⁹³

The Commission does not provide any written explanation for most of its procedural decisions.²⁹⁴ The lack of publicly reasoned

288. MAXIMIZING JUSTICE, *supra* note 28, at 41.

289. *Id.* at 68.

290. *Id.*

291. *Id.*

292. Amended Commission Rules of Procedure, *supra* note 51, art. 36.4.

293. See Manoel Leal de Oliveira v. Brazil, Case No. 12.308, Inter-Am. Comm'n H.R., Report No. 37/10 (2010), available at <http://www.cidh.oas.org/casos/10.eng.htm>; Fátima Regina Nascimento de Oliveira and Maura Tatiane Ferreira Alves v. Brazil, Petition No. 12.378, Inter-Am. Comm'n H.R., Report No. 7/10, ¶ 14 (2010), available at <http://www.cidh.oas.org/casos/10.eng.htm>.

294. The Commission does not publicly state the reasons for convening or denying a hearing nor the reasons for calling witnesses or the purpose of their testimonies. This is a contrast with the practice of the Court. See, e.g., Liakat Ali Alibux v. Suriname, Provisional Measures, Order of the President of the Court (Inter-Am. Ct. H.R. Dec. 20, 2012), available at <http://www.corteidh.or.cr/docs/asuntos/Liakat.pdf>.

decisions regarding procedural issues²⁹⁵ is a persistent obstacle in evaluating and understanding the Commission's process. For instance, the Commission stated that it now deals with petitions and cases in chronological order, but some petitions and cases receive priority and are put in a fast track.²⁹⁶ The Commission has established that it should give priority status to 10% of new petitions and immediately evaluate them.²⁹⁷ Nevertheless, there is no public document discussing how the Commission decides to give priority to certain petitions or cases over others.²⁹⁸ The Commission explained that in order to understand or identify the criteria, one needs to look to individual cases already decided as a guide.²⁹⁹ While this may be possible for certain aspects of the procedure and certain users of the System, for many petitioners,

295. MAXIMIZING JUSTICE, *supra* note 28, at 42. Besides the admissibility and merits reports themselves.

296. *Id.* at 43.

297. STRATEGIC PLAN PART II, *supra* note 162, at 75.

298. MAXIMIZING JUSTICE, *supra* note 28, at 43. In the recent 2013 revised Rules, the Commission corrected this problem. Under revised Article 29.2:

The petition shall be studied in the order it was received; however, the Commission may expedite the evaluation of a petition in situations such as the following:

- a. when the passage of time would deprive the petition of its effectiveness, in particular:
 - i. when the alleged victim is an older person or a child;
 - ii. when the alleged victim is terminally ill;
 - iii. when it is alleged that the death penalty could be applied to the presumed victim; or
 - iv. when the object of the petition is connected to a precautionary or provisional measure in effect;
- b. when the alleged victims are persons deprived of liberty;
- c. when the State formally expresses its intention to enter into a friendly settlement process in the matter; or
- d. when any of the following circumstances are present:
 - i. the decision could have the effect of repairing serious structural situations that would have an impact in the enjoyment of human rights; or
 - ii. the decision could promote changes in legislation or state practices and avoid the reception of multiple petitions on the same matter.

Inter-Am. Comm'n H.R., *Consultation 2013 on Module I: Draft Reform of the Rules*, art. 29.2 (2013), available at http://www.oas.org/en/iachr/consultation2013/1_rules.asp#29 [hereinafter *Draft Reform of Rules*].

299. Commission's Answers, *supra* note 58. The OAS Working Group recommended the Commission to "[c]ontinue to develop objective criteria for setting priorities regarding treatment of petitions and other cases, considering the nature, complexity, and impact of the alleged situations." OAS Working Group, *supra* note 15, at 3.A.h.

such a wealth of documentation would be overwhelming.³⁰⁰ What published reports are available do not provide information on basic questions such as why the Commission granted extensions, requested additional information, or decided not to join the admissibility with the merits. Moreover, existing published reports do not explain the procedural decisions made in the thousands of petitions and cases in the Commission's docket.³⁰¹

With very few exceptions³⁰² there are no deadlines for the adoption of any of the Commission's decisions.³⁰³ As a quasi-judicial body, the Commission needs to have flexibility in the way and order in which it processes petitions to accommodate the needs of the victims, encourage State engagement and cooperation, facilitate friendly settlements, and strengthen the possibilities of the IACHR's impact. Strict procedural deadlines or a ritualistic management of its procedure could hamper its effectiveness.³⁰⁴ But reasonable timeliness, consistency and transparency should not necessarily mean losing its flexibility.³⁰⁵

The procedures set up in the Convention require the cooperation of the State to resolve cases. There is a mechanism that is designed to encourage the State to settle the matter before it is brought to the Court.³⁰⁶ Most of the procedures before the IACHR depends on "the willingness of the government to cooperate in the investigation and to take the necessary steps to resolve it."³⁰⁷ The IACHR has used its

300. MAXIMIZING JUSTICE, *supra* note 28, at 43.

301. Claudio Grossman, *Strengthening the Intra-American Human Rights System: The Current Debate*, 92 Proc. Ann. Meetings (Am. Soc'y Int'l. L.) 186, 188 (1998). (explaining that the Commission does not have a transparent system to grant hearings, admit cases for processing or follow up initiated submissions. Equally, there are currently no deadlines for the Commission to review the admissibility or merits of any given case. As a result, petitioners often do not know the procedural status of their claims which, in turn, affects their opportunity to be competently and timely represented.)

302. "If the friendly settlement referred to in Articles 44-51 of the Convention is not reached, the Commission shall draft, within 180 days, the report required by Article 50 of the Convention." Commission Statute, *supra* note 50, art. 23.2. But even this explicit deadline is routinely ignored by the Commission. *See, e.g.*, Juan José López, Case 11.395 Inter-Am. Comm'n H.R., Report No. 73/11, ¶ 9 (2011) (stating that on May 17, 2001, the State reported that it was unable to find grounds for commencing friendly settlement proceedings, and it reiterated that communication on July 10, 2001. The IACHR approved the merits report *ten years* later).

303. *See* OAS Comm. on Jur. and Pol. Affairs Results, CP/CAJP 2665/08 rev. 8 corr. 3 (Mar. 18 2009) at 11[hereinafter OAS Results] (finding that "the IACHR Rules of Procedure do not provide for any deadlines to be met by the IACHR in the initial processing, admissibility, or merits phases"; that the current lack of deadlines "may generate legal uncertainty among all players" and it is "one of many reasons for delays in issuing rulings" and finally that the "uncertainty regarding deadlines undermines the legitimacy of and confidence in the system.").

304. MAXIMIZING JUSTICE, *supra* note 28, at 43.

305. *Id.*

306. *Id.* at 65.

307. Velasquez Rodríguez Case, Preliminary Objections, ¶ 60.

procedures flexibly while trying to obtain State cooperation.³⁰⁸ The flexibility of IACHR procedures has allowed the IACHR to engage in productive dialogue with governments, even in the darkest days of the region.³⁰⁹ By leveraging the shifting degrees of intensity applied at various stages of the procedure, and diplomacy outside the strict limits of the procedure, the Commission has sought, and quite often achieved, cooperation from reluctant States to solve specific situations.³¹⁰

For instance, in 1995, in the *Villatina massacre* case, the parties initiated the process to reach a friendly settlement.³¹¹ For almost three years, the Commission facilitated the establishment of the Committee to Promote the Administration of Justice, for this and other cases, and created a follow-up committee to monitor the recommendations made by the promotion committee.³¹² As part of this process, in 1998, the Colombian President acknowledged the State had international responsibility for the massacre and “handed to the families of each victim a document as a testimony of moral redress and atonement.”³¹³ Nevertheless, the parties decided to terminate the friendly settlement process because the Government failed to comply with most of the agreements.³¹⁴ The Commission continued to process the case and on November 16, 2001, approved a preliminary merits report and notified the State.³¹⁵

In February 2002, in view of the IACHR’s recommendations, a new Colombian Government expressed its willingness to start up new talks with the petitioners.³¹⁶ The Commission let the parties engage with each other once again despite the fact that the Rules do not contemplate a friendly settlement at this stage of the process, and that Article 50 of the Convention presupposes the failure of the friendly settlement process.³¹⁷ In the end, on July 29, 2002, the parties signed a very comprehensive friendly settlement agreement.³¹⁸ The flexibility and

308. MAXIMIZING JUSTICE, *supra* note 28, at 65.

309. *Id.*

310. *Id.*

311. Villatina Massacre, Friendly Settlement, Case 11.141, Inter-Am. Comm’n H.R., Report No. 105/05, rev. ¶ 6 (2005), available at <http://cidh.org/annualrep/2005eng/Colombia11141eng.htm>.

312. *Id.*

313. *Id.* ¶ 8.

314. *Id.* ¶ 9.

315. *Id.* ¶ 10.

316. *Id.* ¶ 11.

317. American Convention, *supra* note 7, art. 50 (stating that “if a settlement is not reached, the Commission shall . . . draw up a report setting forth the facts and stating its conclusions.”) (emphasis added).

318. Villatina Massacre, Friendly Settlement, ¶¶ 3–12.

willingness of the Commission to go around and beyond the text of the Convention and its own Rules allowed the parties to settle a matter with a far-reaching agreement. Although the process took seven years to conclude, it allowed the Commission to reengage with a new Government and, crucially, secure integral reparations for the victims.³¹⁹

The one negative consequence of the Commission's flexibility is that States have taken advantage of their situational cooperation with the Commission. The treatment of the procedure as a flexible framework, rather than a clear set of rules, has had a negative impact on many cases and hindered the rights of victims to obtain a timely decision, resulting in high levels of procedural uncertainty.

VII. BACKLOG, DELAYS AND THE EFFECTIVENESS AND EFFICIENCY OF THE COMMISSION

The Commission needs to find a proper balance between effectiveness and efficiency in order to deal with its backlog and procedural delays. While the Commission's effectiveness could be hampered by not processing enough complaints within a reasonable amount of time, a more efficient adjudication process cannot be achieved at the expense of the Commission's overall effectiveness.

In order to analyze whether a proper balance has been struck, the goals of the Commission need to be identified. The IACHR's goals offer the framework by which it is possible to evaluate and measure efficiency and efficacy. The different perspectives through which the effectiveness of an intergovernmental human rights mechanism can be analyzed reflect the different conceptions of the goals of such a system.³²⁰ It is not possible to argue whether or not the Commission is effective without some baseline or reference to measure its effectiveness against.

Thus, in order to assess the effectiveness of a system, including the Inter-American, one has to identify its aims or goals—the desired

319. Luis Manuel Lasso-Lozano, *Algunas reflexiones sobre el trámite de soluciones amistosas por parte de Colombia ante el Sistema Interamericano de Protección de los Derechos Humanos*, SIDH (1994–97), 18 Int'l Law, *Revista Colombiana de Derecho Internacional*, 89–116 (2011).

320. See also Centre of Human Rights Education (ZMRB) of the PHZ Lucerne, *Report: Lucerne Academic Consultation on Strengthening the United Nations Treaty Body System*, 4 (2011) (stating that “while there may be many ways in which the system might be made more ‘efficient’ (e.g. [sic] by reducing the number of reports or limiting the scope of opportunities for civil society engagement), such steps might not be appropriate if other goals (such as enhancing opportunities for civil society engagement in reporting procedures) are viewed as important to the system. Deciding which of the proposed changes should be pursued must involve measuring them against the overall purposes of the system and asking whether they would be likely to promote those purposes.”).

outcomes that it ought to generate—“and ascertain a reasonable time frame for meeting some or all of these goals.”³²¹ In the leading study on the effectiveness of supranational adjudication, Slaughter and Helfer recognize that “defining effectiveness . . . inevitably requires asking the question ‘effective for what purpose?’ - an inquiry that will in turn depend on a prior conception of the functions of specific courts within specific legal systems.”³²² “These functions . . . may conflict with one another; they may also each generate a different metric of effectiveness.”³²³ From this perspective, Steiner discussing the “burst of [human rights] commissions, committees and courts;” has inquired, for example: “[W]hat purposes should such forms of international dispute resolution between individuals and their state of nationality serve? What goals should give direction to these innovative processes? Are there generally valid answers to these . . . questions, or will answers necessarily vary with context?”³²⁴

There are theoretical and practical challenges in attempting to respond to these questions. The theoretical difficulty is that there has been little analysis regarding the goals of human rights systems in general and in the Inter-American system in particular.³²⁵ The practical

321. Yuval Shany, *Assessing the Effectiveness of International Courts: A Goal Based Approach*, 106 AM. J. INT’L L., 225, 230 (2012).

322. Anne-Marie Slaughter & Laurence Helfer, *Toward a Theory of Effective Supranational Adjudication*, 107 YALE L.J., 273, 282 (1997).

323. *Id.* at 202 (stating that the definition of what effectiveness or success means appears to be a controversial issue, not only in the sphere of human rights, but in international law in general); David López, *Dispute Resolution Under NAFTA: Lessons from the Early Experience*, 32 TEX. INT’L L.J. 163, 200 (1997) (defining what constitutes “success” in the context of dispute resolution under NAFTA is extremely controversial).

324. Henry Steiner, *Individual Claims in a World of Massive Violations: What role for the Human Rights Committee?*, in THE FUTURE OF THE UN HUMAN RIGHTS TREATY MONITORING 15, 16 (Philip Alston & James Crawford eds., 2000). The references in this article to other human rights bodies and courts are meant to provide ideas on how to frame these issues or think about potential reform of the Commission’s procedure. As I discussed in the text, due to the unique goals and functions of the Commission as a human rights body with multiple tasks, including quasi-judicial adjudicatory tasks, and the context in which it operates, there are limitations to the comparisons. I do not mention other Courts and bodies to measure the Commission’s performance against them. On the contrary, the reference to other bodies is in part in order to delineate and justify what would be the proper differences between the Commission and the other bodies. The use of other bodies’ experiences is also intended to distinguish the way in which the Commission’s procedural practices justifiably differ from other similar bodies. It is used to highlight the peculiarities and strengths as well as the weaknesses of Commission Rules and practices. See also Paolo Carozza, *Advocacy Before Regional Human Rights Bodies: A Cross-Regional Agenda*, 59 AM. U.L. REV., 163, 215 (2008).

325. Davis and Werner had identified four purposes of an international court that hears human rights cases from post-conflict democracies, including the Inter-American Court. First, it should operate to deter future violations with rulings that equip people to call for accountability. Second, it should facilitate the legal and moral condemnation of human rights violations. Third, its jurisprudence should transcend the parties in the case in order to express the normative value

difficulty is that there is no consensus among the different actors with respect to those goals,³²⁶ and no attempt to identify them. In addition, as with any international adjudicatory body, the Commission has diverse goals that reflect the expectations of different internal and external constituencies.³²⁷ This article emphasizes the Commission's broader mandate and its main goal is to promote and protect human rights.³²⁸ Thus, the Commission could only be effective if its case system reflected and sought to achieve this larger aim. But as a body with quasi-judicial, promotional, diplomatic, and political functions, the IACHR tends to fulfill several different and specific goals that, at times, could contradict each other. The way it designs and administers its case system is informed, constrained and limited by all the different and sometimes competing goals. Thus, the IACHR can be effective if its case system advances most of its goals most of the time.

In its most limited way, effective adjudication could be defined in terms of an adjudicatory body's "ability to compel or cajole compliance with its" decisions.³²⁹ In order to be effective, supranational tribunals and quasi-judicial bodies in their adjudicatory role must ensure compliance by convincing domestic governments to act in accord with their rulings.³³⁰ Thus, as a starting and limited point, both the problems of delay and backlog and the possible responses to them should be considered in terms of their impact on the ability of the Commission to compel compliance with its decisions in individual cases. In fact, the only quantitative study on the level of compliance with decisions of the Commission and the Court makes explicit references to the duration of the procedure as a relevant factor to take into consideration.³³¹ But, as the Inter-American system in general, and the case system in particular, has several different goals,³³² compliance with its recommendations or

of justice and equality under the law to broad classes of victims. Fourth, it should establish knowledge of past actions committed under color of law and create a historical record. Edward Warner & Jeffery Davis, *Reaching Beyond the State: Judicial Independence, the Inter-American Court of Human Rights and Accountability in Guatemala*, J. HUM. RTS. 6, No. 2, 233-55 (2007).

326. See EL FUTURO, *supra* note 23, at 9 (stating there the System confronts an identity crisis as there is a fundamental disagreement among the main actors on the current legal and political direction of the System).

327. Shany, *supra* note 321, at 233.

328. American Convention, *supra* note 7, art. 41. "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." OAS Charter *supra* note 49, art. 106.

329. Slaughter & Helfer, *supra* note 322, at 110.

330. *Id.*

331. Basch, *supra* note 137, at 26.

332. Lea Shaver, *The Inter-American Human Rights System: An Effective Institution for Regional Rights Protection?*, 9 WASH. U. GLOBAL STUD. L. REV. 639, 665 (2010). The effectiveness of an international tribunal may be judged in several aspects, not all of which are

with decisions of the Commission and Court is only one element to take into consideration when assessing the System's effectiveness.³³³

We believe that a human rights system would be effective if it is able to achieve reasonable goals given the economic, social and political setting within which it operates; the nature of the violations it has to handle; and the powers granted in service of its supervisory function.³³⁴ The context sets not only the possibilities of the System but also conditions its goals.³³⁵ In this regard, both to assess the effectiveness of the Commission and the way in which it handles individual complaints, there is a need to have some understanding of what goals the Inter-American system seeks to meet by establishing an individual complaint mechanism and the context in which operates.³³⁶

The goals of the Commission in its adjudicatory process³³⁷ are: i) the protection of individuals,³³⁸ ii) raising awareness³³⁹ and serving as an

easily measured. In simple terms, a court's effectiveness may be measured by the number of cases it resolves, and whether the orders that it issues are in fact followed. Ultimately, however, human rights tribunals exist in large part to achieve much broader effects.

333. See Huneeus, *supra* note 1, at 505 (stating that implementation is not the only and arguably not the most significant potential outcome of a court ruling). In fact, compliance is distinct from, although related to, questions of effectiveness. For instance, international regimes could have high rates of compliance with very low and ineffective standards. Par Engstrom, *Effectiveness of International and Regional Human Rights Regimes*, THE INT'L STUDIES ENCYCLOPEDIA 5 (Robert A. Denmark ed., 2010).

334. A. GLENN MOWER, JR., REGIONAL HUMAN RIGHTS: A COMPARATIVE STUDY OF THE WEST EUROPEAN AND INTER-AMERICAN SYSTEMS 164 (1991).

335. See Sergio Garcia Ramirez, Judge, Inter-Am. Ct. of H.R., Address at the Conference: Advocacy Before Regional Human Rights Bodies: A Cross-Regional Agenda (Oct. 20, 2008) (stating that it is not necessary to impose on each human rights system the rules and regulations of the other, because each works within circumstances and conditions that are sometimes profoundly different; the achievements of each system are within the circumstances of each).

336. Shany, *supra* note 321, at 231.

337. Steiner had speculated that the Human Rights Committee in its adjudicatory capacity could serve any of all of three purposes associated with adjudicatory bodies in general: (a) doing justice in the individual case; (b) protecting rights through deterrence and related behavior modification; and (c) "expounding, elucidating, interpreting and explaining the Covenant so as to engage Committee in an ongoing, fruitful dialogue with states parties, non-governmental and intergovernmental institutions, advocates, scholars and students." Steiner *supra* note 324, at 31. Shany has identified four generic goals that all or almost international courts have been encourage to achieve: 1. Promoting compliance with the governing international norms; 2. Resolving international disputes and specific problems; 3. Contributing to the operation of related institutional and normative regimes and 4. Legitimizing associated international norms and institutions. Shany, *supra* note 321, at 244-46.

338. The American Declaration Preamble establishes that the "international protection of the rights of man should be the principal guide of an evolving American Law." Declaration, *supra* note 44, at 1. Similarly, the Convention creates the Commission and the Court as "[m]eans of Protection." American Convention, *supra* note 7, at Part II. Therefore, the Court as well as the Commission has an obligation to preserve all of the remedies that the Convention affords victims of violations of human rights so that they are accorded the protection to which they are entitled under the Convention. Gallardo et al. v. Costa Rica, Provisional Measures, Order of the President

early warning system,³⁴⁰ iii) establishing human rights standards,³⁴¹ iv) creation of a democratic forum to discuss human rights issues³⁴² and v)

of the Court, Inter-Am. Ct. H.R. (ser. A) No. G, ¶ 15 (July 15, 1981). This could be the “official” goal of the System as put forth in the official document that could be distinguished from the operative goals of the System. Shany, *supra* note 321, at 231. See also Basch, *supra* note 137 (stating that the variety of the remedies adopted by the IACHR and the Inter-American Court seems to confirm the widespread vision that the objectives sought by the Inter-American System are, with relatively few exceptions, to make reparations to affected persons or groups and to give protection to victims and witnesses). The International Coalition of Human Rights Organizations of the Americas has stated that “the primary objective of the [system] is not to achieve an abstract ideal of justice, but rather to guarantee protection of human dignity without distinction and to see justice done for specific victims of human rights violations.” OAS Coalition Observations, OAE/Ser.G CP/INF 6386/12 (Jan. 25, 2012) [hereinafter Coalition Observations]. But not all agree with this position. For instance, in the African context it was argued that while the African human rights court should protect individuals, it “should not be viewed as a forum for offering individual justice to victims of human rights violations.” While such a goal is certainly noble, it is by all means impossible.” Makau Mutua W., *The African Human Rights Court: A Two-Legged Stool?*, 21 HUMAN RIGHTS QUARTERLY 342–63, 361 (1999). In Europe, the discussion on how to deal with the backlog crisis of the European Court has focused on whether the Court should “provide ‘individual’ or ‘constitutional’ justice. Advocates of the former view argue that the right of individual petition is the centerpiece of the [European system requiring the Court to hear every case] and provide a remedy to every individual whose human rights have been violated. Proponents of the [constitutional justice] position argue, [similar to Steiner’s position with regard to the Human Rights Committee, that the European Court] should concentrate on providing ‘fully reasoned and authoritative [decisions] in cases which raise substantial or new and complex issues of human rights law, which are of particular significance for the State concerned or involve allegations of serious human rights violations and which warrant a full process of considered adjudication.’” Helfer *supra* note 22, at 127.

339. The Convention specifically provides that one of the activities of the IACHR is to “develop an awareness of human rights among the peoples of America.” American Convention, *supra* note 7, art. 41.1. See Tom J. Farer, *The Rise of the Inter-American Human Rights Regime: No Longer a Unicorn, Not Yet an Ox*, 19 HUM. RTS. Q. 510, 524 (1997) (In the case system, this goal could mean paying closer attention to cases representing structural problems or cases that give visibility to traditionally marginalized issues or groups.).

340. See generally Santiago Canton, AMNESTY LAWS, IN VICTIMS UNSILENCED: THE INTER-AMERICAN HUMAN RIGHTS SYSTEM AND TRANSITIONAL JUSTICE IN LATIN AMERICA (2007) (stating that “[t]he IACHR’s mandate to receive complaints of human rights violations has enabled it . . . to acquire a detailed understanding of situations involving large-scale human rights abuses. It can then take swift action to alert the international community about these situations. Known as “early warning,” this is perhaps the most important function of the IACHR, as it provides an avenue for timely intervention by the international community to prevent the continuation of massive violations of human rights.”). See also Claudio Grossman, *Strengthening the Intra-American Human Rights System: The Current Debate*, 92 Proc. Ann. Meetings, AM. SOC’Y INT’L L. 188 (1998) (indicating that “the case system’s approach is particularly effective because it performs a preventive role and serves as an early-warning function: a single violation could be the first indication of the beginning of a process that, if allowed to proceed, will result in regression back to an authoritarian structure.”). For a similar argument in Europe, see Helfer, *supra* note 22, at 129 (arguing that “national Governments established the Convention as an early warning system to sound the alarm in case Europe’s fledgling democracies began to backslide toward totalitarianism”).

341. See, e.g., Victor Abramovich, *The Rights-Based Approach in Development Policies and Strategies*, 88 CEPAL REV. 33 (Apr. 2006) (arguing that the rulings by the Commission and the Court “on a particular case have a heuristic value, as interpretations of the treaties by which conflict should be governed, that transcends the particular cases of the immediate victims”). The Inter-American case law serves as a guide for subsequent domestic rulings by national courts.

legitimization of actors.³⁴³ Informed by these many goals, the processing of individual complaints and the decisions that result produce ripple effects, both in the domestic sphere and in the international system. These effects are important in defining the goals of the Inter-American system, assessing its effectiveness, and analyzing and dealing with its delay and backlog. Not all effects or goals³⁴⁴ are solely, or even mainly, tied to the degree of compliance with the IACHR's decisions.

The Commission (and the Court) has "sought not only to compensate the victims in individual cases" (which would require compliance with their decisions), "but also to establish a body of principles and standards, with the objective of influencing" domestic democratic processes and strengthening national protection mechanisms.³⁴⁵ The Commission's (and Court's) influence however, does not limit itself to the impact of their jurisprudence on local courts. The Commission (and the Court) pursues the processing and resolution of individual cases, to persuade States to formulate policies to redress the situation giving rise to each case, and to address the structural

For the African context, see Mutua arguing for the African Court to hear only those cases that have the potential to expound on the African Charter on Human and People's Rights and make law that would guide African States in developing legal and political cultures that respect human rights. *See also* Mutua, *supra* note 338, at 362; Steiner, *supra* note 324, at 246 (with regard to the Human Rights Committee).

342. *See* Harris, *supra* note 214, at 177. Many times the Inter-American System is the only space where civil society organizations and governments can debate in safe conditions about human rights and where the government is forced to listen and discuss human rights policies. The processing of individual cases provides a space where a bilateral discussion occurs between the petitioner and the State with the IACHR mediating the discussion between the parties. This discussion will eventually provide the IACHR with the information required to adopt a resolution if necessary or may permit the resolution of the case through friendly settlement. The Commission is thus a platform upon which the struggle over human rights between and among activists and States has played out. Engstrom, *supra* note 333, at 13.

343. As Cohen has said, "Many times, States argue that victims, witnesses, journalists and human rights organizations are lying and cannot be believed because they have a political interest in discrediting the government. If the source of the evidence can be shown to be suspect in any of these ways, then the violations obviously did not take place or are being exaggerated." Stanley Cohen, *Government Responses to Human Rights Reports: Claims, Denials, and Counterclaims*, 18 HUMAN RIGHTS Q. 517, 524 (1996). As the Commission studies each complaint with the same degree of respect for the petitioners and gives the same degree of weight to their arguments, the process itself serves to give legitimacy to those actors. If the Commission, in addition, rules in their favor, their legitimacy and credibility increases enormously.

344. I understand that goals and effects are not necessarily the same. I am conflating them in this article for the purpose of showing that compliance with the decisions of the Commission is too limited to analyze the effectiveness of the Commission and to show that the process is as important as the outcome.

345. Victor Abramovich, *From Massive Violations to Structural Patterns: New Approaches and Classic Tensions in the Inter-American Human Rights System*, SUR INT'L HUMAN RIGHTS L.J., 7, 10 (2009).

problems that are at the root of the conflict analyzed in the case.³⁴⁶ Thus, most of those involved with the Inter-American system agree that a crucial goal should be to enhance its domestic impact.³⁴⁷ Supranational bodies will generally have the greatest impact when their procedures and judgments are relevant to local actors.³⁴⁸ But even in this broader sense, the importance of State compliance with the rulings of the Commission (and the Court) cannot be denied.³⁴⁹

The processing of cases by the Commission (and also by the Court) has gradually become a privileged arena of civil society activism, producing innovative strategies that make use of the international repercussion of those cases and situations they denounce. Organizations use the IACHR and the processing of cases not only to denounce violations and make visible certain questionable State practices, but also to attain a measure of legitimacy that allows them to dialogue with governments and their partners from a different status, and to invert the power relationship, altering the dynamics of domestic political processes.³⁵⁰ As such, the processing of cases by the Commission (and not necessarily the final decision), even a lengthy one, should be viewed as a space that could force, facilitate, and expand social participation and legitimize social actors.³⁵¹

I agree with Koh that transnational actors obey international law as a result of repeated *interaction* with other actors in the transnational legal process.³⁵² Thus, “a first step is to empower more actors to participate.”³⁵³ Transnational legal processes, including the Commission’s case system, trigger those interactions.³⁵⁴ Interactions between the Commission, government representatives, and organizations strengthen the position of the victims as well.³⁵⁵ The cases of the Commission demonstrate that in the international arena, the process is as important as the outcome. As a process, the Commission

346. *Id.* at 12.

347. For the same argument with regard to the Court, see Cavallaro, *supra* note 261, at 2.

348. *Id.* at 770.

349. Huneeus, *supra* note 1, at 505.

350. See Par Engstrom & Andrew Hurrell, *Why the Human Rights Regime in the Americas matters*, THE HUMAN RIGHTS REGIMES IN THE AMERICAS: THEORY AND REALITY 37 (Monica Serrano & Vesselin Popovski eds., 2010).

351. Abramovich, *supra* note 345, at 14.

352. Harold Hongju Koh, *Why Do Nations Obey International Law?* 106 YALE L.J. 2599, 2656 (1997).

353. *Id.*

354. Harold Hongju Koh, *Jefferson Memorial Lecture Transnational Legal Process After September 11th*, 22 BERKELEY J. INT’L L. 337, 339 (2004).

355. Jorge Contesse, *Constitucionalismo Interamericano: Algunas Notas Sobre Las Dinámicas de Creación e Internalización de Los Derechos Humanos*, in EL DERECHO EN AMERICA LATINA: UN MAPA PARA EL PENSAMIENTO JURÍDICO DEL SIGLO XXI 251, 267 (Cesar Rodríguez Garavito ed., 2012).

provides a forum in which argumentation takes place. It provides a key meeting place and arena for the mobilization of consensus and a site for the battle of justifications.³⁵⁶ The IACHR contributes, in this sense, to shifts in how government actors understand problems and attempt to deal or justify them.³⁵⁷

Additionally, the processing of cases by the Commission contributes to what Helfer has named “diffuse embeddedness”³⁵⁸ and fulfills part of the socializing functions that international institutions can exert over the behavior of national actors.³⁵⁹ That the Commission can exert influence over the behavior of national decision-makers does not rest on its coercive power, but rather in the “the skillful [sic] use of persuasion to realign the interests and incentives of decision-makers in favour of compliance” with the Commission’s decisions.³⁶⁰

Finally, interaction with the System may affect the relative power of sectors within the government that deal with human rights issues. Operating within the System, and having to justify the State’s official policies in terms of the System’s discourse while remaining engaged with other actors (particularly domestic human rights groups), fosters this socialization process.³⁶¹ Thus, the authority of the decisions and the jurisprudence of the Inter-American System, and particularly of the Commission, depends in part on its social legitimacy and on the existence of a community of engaged actors who interact but also monitor and disseminate the System’s decisions and standards. In the processing of cases, the Commission should be aware of the political processes of involved States at key moments. The IACHR also needs to support and enhance the community of social, political and academic actors who consider themselves protagonists in the evolution of the Inter-American System and who participate actively in the processing of cases and/or in the national implementation of its decisions and principles.³⁶²

356. Alejandro Anaya Muñoz, *The role of international Regimes in the constitution of State behavior and identity: the case of contemporary Mexico*, Special Edition, REVUE QUEBECOISE DE DROIT INT’L, (Special Edition) 38, 44 (2011).

357. See Ryan Goodman & Derek Jinks, *How to Influence States: Socialization and International Human Rights*, 54 DUKE L.J. 621, 638 (2004).

358. Helfer, *supra* note 22, at 135.

359. Goodman & Jinks, *supra* note 357, at 635–38.

360. Helfer, *supra* note 22, at 135.

361. Engstrom & Hurrell, *supra* note 350, at 39.

362. For instance, legislators who may need to draft new or amend existing legislation; prosecutors who may need to open or continue criminal investigations; journalists who may disseminate the decisions of the IACHR or law professors who analyze, criticize, support and/or teach those decisions.

From this perspective, the Commission's processes and the decisions it renders are equally important. The Commission should develop procedures that increase the relevance of its cases to domestic (and in some cases, international) movements that are working to eliminate the structural causes of human rights violations. It should design a system that facilitates access, legitimization, and dialogue. In that sense, the Court has been criticized for certain counterproductive measures it has adopted, such as reducing the number of witnesses who appear in person at Court hearings or reducing the number of days for public hearings in each case.³⁶³ While those measures reduced the length of the Court's procedure, the outcome was achieved at the expense of space for public advocacy.³⁶⁴ This critique shows the connection between process, outcome and implementation. The IACHR should be careful in the design and administration of a procedure that is perceived as legitimate by all the actors involved. If the Commission acts and processes cases in a way that is perceived as illegitimate, the possibility of States acting according to the IACHR's recommendations will be lower.³⁶⁵

The conception of the processing of cases as a space for transnational socialization, together with the different goals that the Commission pursues in general and in processing individual complaints in particular, could give rise to very different and perhaps directly contradictory suggestions as to whether and how to speed up the adjudicative mechanism.³⁶⁶ From this perspective, it should be determined when the processing of cases and petitions requires expediency, some degree of delay, or some balance of the two.³⁶⁷ In the context of international criminal tribunals, time and delay can be essential to successful prosecutions, and expediency in war crimes prosecutions is not always possible, or even desirable.³⁶⁸ If societies coming out of civil wars are not ready to seek justice in the immediate aftermath of such traumatic events, the passing of time may open possibilities for the arrest or prosecution of those accused of committing

363. Cavallaro, *supra* note 261, at 770.

364. *Id.* at 781, 799. See Helfer, *supra* note 22, at 136 for a description of how a procedural tool such as the pilot judgment serves the purpose of increasing the dialogue between the European Court and National Parliaments.

365. Cavallaro, *supra* note 261, at 775; see generally THOMAS FRANCK, THE POWER OF LEGITIMACY AMONG NATIONS (Oxford Univ. Press 1990) (arguing that the more legitimate international institutions appear to be and function in the eyes of States, the greater is their capacity to secure compliance with its decisions).

366. Similarly, in the context of international criminal justice, see Galbraith, *supra* note 26 at 82.

367. See Whiting, *supra* note 25 at 326 (nothing the similarity in the context of international criminal justice).

368. *Id.*

international crimes.³⁶⁹ The same reasoning could be applicable to the Commission in certain circumstances. The IACHR consistently recommends identification, prosecution and punishment of those responsible for grave human rights violations.³⁷⁰

More broadly, the timetable of processing cases does not necessarily coincide with political momentum. Therefore, advocates need to at least recognize this dissociation between decisions and impacts. Advocates need to be able to advocate for their cases only when the political moment in the country offer, at least in theory, the best chances of effective international pressure by means of a decision of the Commission.³⁷¹

Achieving the goal of protecting individuals requires State cooperation, participation, and engagement. To facilitate State involvement, the Commission may need to provide more time and opportunity for States to respond, rather than handling a decision without the State buying in. Similarly, a flexible procedure and flexible management of the procedure gives States an opportunity to rectify the situations that occasioned the complaints. A flexible procedure that allows for fluid discussion between the parties enhances the probability of compliance with the final decision.³⁷²

As one of the goals of the petition system is to promote dialogue between petitioners and the State, the Commission has had to grant leeway with deadlines to provide States with sufficient time to answer complaints. The individual complaint mechanism could occasionally run against the idea of a speedy processing of petitions as the timing of a policy discussion and of the processing of a case are not necessarily the same. Repetitive briefs, multiple hearings, and working meetings may be required even if they delay the final decision.³⁷³

369. *Id.*

370. *See, e.g.*, Manoel Leal de Oliveira, Case 12.308, (recommending the State to “conduct a thorough, impartial, and effective investigation into the events, so as to identify and punish all of the material and intellectual authors of the murder”).

371. James L. Cavallaro & Emily J. Schaffer, *Less as More: Rethinking Supranational Litigation of Economic and Social Rights in the Americas*, 56 HASTINGS L.J. 217, 251 (2005).

372. Michael Cosgrove, *Protecting the Protectors: Preventing the Decline of the Inter-American System for the Protection of Human Rights*, 32 CASE W. RES. J. INT’L L. 39, 48–49 (2000).

373. *See* for instance the Correa Belisle case that involved a challenge to the Argentine Military Code of Justice. The petition was submitted in 1997, the parties reached, after long negotiations, an agreement in 2006, but Congress modified the Code only in 2007 and the Commission adopted a report in 2010. Rodolfo Luis Correa Belisle, Petition No. 11.758, Inter-Am. Comm’n H.R., Report No. 15/10 (Mar. 16, 2010), *available at* <http://www.cidh.oas.org/annualrep/2010eng/ARSA11758EN.doc>.

Of course, a dialogue that occurs several years, or even decades, after the alleged human rights violation took place could be, in many instances, completely irrelevant. In the intervening years and decades, the victims, witnesses, and perpetrators may have died. The harm may have been exacerbated. Governments and regimes may have changed. Given the likelihood of these occurrences, how could the goal to promote dialogue be served if the Commission decides a case ten or fifteen years after the violation happened?³⁷⁴

Like any organization, the Commission may be effective in fulfilling all or most of its goals but still be inefficient by generating considerable costs and negative externalities.³⁷⁵ Similarly, the Commission may be efficient in acting expeditiously but ineffective if it fails to meet its goals.³⁷⁶ Thus, the delays and backlog of the Commission should be understood in light of the different Commission's goals. The design and administration of a speedy adjudicatory process should be at the service of the goals that the Commission pursues, and the solutions sought should serve to enhance the ability of the Commission to achieve those goals. Any discussion on restructuring the proceedings should consider the impact of the different measures on those goals.³⁷⁷

As a consequence, the range of possible solutions that the Commission could implement is limited.³⁷⁸ For instance, the goal of protecting victims and legitimizing actors in the handling of individual complaints requires open access to as many individuals as possible, particularly those marginalized and harassed.³⁷⁹ A move to a more automated and web-based system could not be fully adopted if it imperils the right of access to the Commission by individuals without access to computers or the Internet, as is the case in many areas in the region.³⁸⁰ Also, measures intended to reduce the backlog by raising the admissibility bar, making it more difficult to file complaints with the

374. See Antonio Ferreira Braga, Brazil, Admissibility and Merits, Case 12.019, Inter-Am. Comm'n H.R., Report No. 35/08 (2008). In this case, the Commission dealt with the torture by the Police against Mr. Ferreira Braga that took place in 1993. The Commission decided the case 15 years after the torture took place. Surely, by that time, the Governor of the State was not the same, the police Chief may have retired, the police officers probably moved up through the ranks, Mr. Ferreira did not get any redress and, more concerning, many other people probably suffered the same types of torture.

375. Shany, *supra* note 321, at 237.

376. *Id.* at 237.

377. MAXIMIZING JUSTICE, *supra* note 28, at 65.

378. *Id.*

379. *Id.*

380. *Id.*

IACHR, or creating a *certiorari* type of filter,³⁸¹ would run against those goals of the Commission.³⁸²

The process itself, rather than its outcome, is an essential component of the functioning and effectiveness of the Commission. Just initiating a case can serve important short-term goals, such as bringing attention to an underlying problem, issue, or violation; beginning to identify and stigmatize those violations and the State responsibility for them; focusing the international community attention; and validating the suffering of the victims.³⁸³ For purposes such as serving as an early warning, the opening of a case, and the holding of a hearing, the issuing of a press release rather than the final disposition of the case could help raise awareness about the particular issue, victim or violation³⁸⁴.

As a space for dialogue and for human rights advocacy, the processing of cases itself, rather than the outcome, is essential. Thus, in certain circumstances, the speedy resolution of cases could hamper this space. For instance, if those responsible for an alleged violation still hold power, State cooperation and willingness to discuss human rights issues may not be forthcoming until those officials are out of power. A long, drawn out process that keeps a case open could encourage international condemnation, pressure the government officials involved to leave office, and facilitate future cooperation with new governments.³⁸⁵

Alternatively, a slow, selective, and frustrating process also hampers the credibility and legitimacy of the Commission. Years of inactivity, repetitive steps, and uncertainty lead to frustration and disengagement from States and NGOs alike. While a flexible and time-consuming process helps the Commission in certain circumstances to

381. See Cesar Gaviria, Secretariat for Legal Affairs, Organization of American States, Document Presented at the General Assembly Session: *Toward a New Vision of the Inter-American Human Rights System* (Nov. 3, 1997) (available at CP/doc.2828/96).

382. Ariel Dulitzky, Viviana Krsticevic and Alejandro Valencia Villa, "Una Visión No-Gubernamental del Proceso de Reforma del Sistema Interamericano de Derechos Humanos," 4 THE JOURNAL OF LATIN AMERICAN AFFAIRS 38, 41 (1996), available at <http://www.utexas.edu/law/faculty/adulitzky/43-Non-Govt-Perspective-esp.pdf>.

383. Whiting, *supra* note 25, at 328.

384. For example, the press release and its annex issued by the Commission at the end of its 143rd. Session where the Commission highlights the situation of women, indigenous peoples and children among others based on the information received during hearings. Press Release, Inter-Am. Comm'n H.R., IACHR Brings its 143rd Regular Session to a Close (Nov. 4, 2011), available at http://www.oas.org/en/iachr/media_center/PReleases/2011/117.asp.

385. For instance, after the reestablishment of the democratic government in Peru in 2000, the new Government offered "solutions to a significant number of cases" that were pending with the IACHR. See Joint Press Release, Inter-Am. Comm'n H.R., Meeting with Representatives of the Government of Peru (Feb. 22, 2001) available at <http://www.cidh.org/Comunicados/English/2001/Peru.htm>.

promote some of its goals, there is a point where the lethargic pace of adjudication impacts the overall effectiveness of the IACHR. Delays diminish the deterrent value of processing cases, undermine the quality of evidence, allow the perpetrators to continue living in impunity, discourage and marginalize victims, and lead to a squandering of the international community's interest in such cases.³⁸⁶

In sum, the Commission has multiple goals in the promotion and protection of human rights. These goals sometimes contradict each other. The Commission must strike the appropriate balance between the speedy resolution of human rights claims and making sure that States redress victims. In doing so, it may sometimes have to sacrifice the goal of a speedy process in order to achieve other goals. The architecture of its case system needs to reflect those tensions and be flexible enough to accommodate them. Finally, the process is as relevant as its outcome represented by the final decision of the Commission. In the next section, I make recommendations to the Commission with those tensions in mind.

VIII. RECOMMENDATIONS TO THE INTER-AMERICAN COMMISSION

Based on our study and experience, and considering our vision of the Commission's goals, there are several recommendations to make. Most of the changes outlined here require only modifications in practices or in the Rules of Procedure. Thus, most of the recommendations (with the exception of the financial resources) are under the control of the Commission and could be implemented by the Commission itself. I purposely avoided making any recommendations that would require amending the Convention or the Statute which involve State participation and consent.³⁸⁷ Nevertheless, in several publications, I have advocated for a more radical change that would amend the American Convention to clearly establish a division of duties between the Commission and Court in processing individual complaints.³⁸⁸ In that sense, this section should be read as only one

386. Whiting, *supra* note 25, at 326. In fact, one may wonder how the years of delay end up shaping the Inter-American docket. It seems that the only actors who would be interested in using such a system are well-established civil society players who have long-term strategies. Individuals and NGOs who have a shorter time horizons will avoid the Inter-American system, or pursue only precautionary measures, or delegate the whole litigation process to those more established NGOs. As such, delays contribute to the type of actors who actively interact with the Commission and the type of strategies that they pursue. I thank Alex Huneeus for this observation.

387. American Convention, *supra* note 7, art. 76; Commission Statute, *supra* note 50, art. 22.

388. I propose a fundamental change in the IACHR's profile through the modification of its participation in the individual petition system. The Commission should only act as an organ of

component of a multi-dimensional, long-term reform of the Inter-American System. Finally most of the recommendations do not require additional funds.

The OAS is the main party responsible for the current situation as the Commission is underfunded and understaffed.³⁸⁹ The OAS should allocate more resources to help the Commission reverse the increasing backlogs and delays. I believe that 25% of the OAS budget should be allocated to the Commission and the Court.³⁹⁰ As long as member states do not properly fund the Commission, they will continue to be the main parties responsible for the current backlog and delay. Providing the necessary funds avoids conflicts of interest for donating member and observer states, and is, simultaneously, more sustainable in the long run.³⁹¹ The Commission has launched fundraising campaigns that involve targeted goals aimed at specific functions of the Commission.³⁹² The Commission's approach to fundraising should continue to focus on the publicized goals including the reduction of its backlog. Some observers have said that if no additional funds are provided, the Commission faces a potential collapse.³⁹³

While an increase in funding and human resources would enable the Commission to address more petitions and cases in a timely manner, it is not the solution to all of the challenges faced by the Commission. The IACHR may make several changes that do not require additional funding. Those changes would enable the Commission to reallocate its existing resources more efficiently, and consequently, would increase its overall effectiveness.

admissibility and facilitator of friendly solutions, and the Court as a tribunal that carries out findings of fact and makes legal determinations on the merits of complaints. *See, e.g.*, Dulitzky, *Fifty Years*, *supra* note 1, at 128; Ariel Dulitzky, *La OEA y los Derechos Humanos: nuevos perfiles para el Sistema Interamericano*, 4 *DIÁLOGO POLÍTICO* 69–108 (Konrad-Adenauer Stiftung, 2008); Ariel Dulitzky, *Reflexiones sobre la judicialización interamericana y propuesta de nuevos perfiles para el amparo interamericano*, *LA REFORMA DEL PROCESO DE AMPARO: LA EXPERIENCIA COMPARADA*, 327 (Samuel B. Abad Yuparqui & Pablo Pérez Tremps eds., Palestra, 2009) [hereinafter Dulitzky, *Reflexiones*].

389. *See supra* Section VI.

390. *See* Dulitzky, *Reflexiones*, *supra* note 388.

391. *See* Cavallaro, *supra* note 261, at 783.

392. Budget of the Strategic Plan, *supra* note 7, at i.

393. Maria Claudia Pulido, *Los Desafíos Presupuestarios y Financieros de la Comisión Interamericana de Derechos Humanos de la OEA*, 16 *DUE PROCESS OF LAW FOUNDATION*, 59, 61 (2012).

A. Structure of the Proceedings

1. Combined Commission Decision

The Commission should amend its Rules and combine the admissibility and merits decisions into one.³⁹⁴ Our data suggests that the separation of the admissibility and merits decisions did not bring more clarity to admissibility requirements and actually slowed, rather than quickened, the pace of adjudication.³⁹⁵ The implementation of this recommendation, above all others, would notably reduce the backlog and delay.³⁹⁶ The experience of the Court, combining its preliminary objections, merits and reparations stages, suggest that this change will be effective in speeding up the process and reducing backlog and duplication.³⁹⁷ Many States and other actors may object to this change.³⁹⁸ In fact, the OAS recommended exactly the opposite, asking the Commission to define objective criteria for the combining of the admissibility and merits stages.³⁹⁹ However, the Commission's credibility and legitimacy has been developed—and continues to be built—on its determination to create a system responsive to the needs of

394. MAXIMIZING JUSTICE, *supra* note 28, at 101.

395. *Id.*

396. *Id.*

397. *Id.*

398. See OAS Results, *supra* note 303, at 10 (indicating that in practice deferring the treatment of admissibility until consideration of the merits “substantially affects due process” and “restricts the process of seeking a friendly settlement”).

399. MAXIMIZING JUSTICE, *supra* note 28, at 101. The Commission did so in its recent reforms to its Rules. Revised Article 36. 3 states:

In exceptional circumstances, and after having requested information from the parties in accordance with the provisions of Article 30 of these Rules of Procedure, the Commission may open a case but defer its treatment of admissibility until the debate and decision on the merits. The decision shall be adopted by a reasoned resolution of the Commission, which will include an analysis of those exceptional circumstances. The exceptional circumstances that the Commission shall take into account will include the following:

- a. when the consideration of the applicability of a possible exception to the requirement of exhaustion of domestic remedies would be inextricably tied to the merits of the matter;
- b. in cases of seriousness and urgency, or when the Commission considers that the life or personal integrity of a person may be in imminent danger; or
- c. when the passage of time may prevent the useful effect of the decision by the Commission.

the victims.⁴⁰⁰ One of the main demands of the victims is to have their complaints fully decided in a timely manner.⁴⁰¹

2. Addressing Structural Issues

The Commission should consider using pilot decisions similar to the pilot judgments of the European Court of Human Rights.⁴⁰² Pilot decisions would be applicable to cases that are virtually the same with respect to the structural problems underlying them.⁴⁰³ This method will be most effective if the Commission implements a procedure so that once a decision is made, all pending cases involving the same issue are noted and immediately resolved using the *per curiam* decision.⁴⁰⁴ The modifications to the Rules would create a procedure that operates when the Commission receives a significant number of petitions deriving from the same root cause.⁴⁰⁵ In those situations, the Commission may decide to select one or more of them for priority treatment. In dealing with the selected petition/case or petitions/cases, it will seek to achieve a solution that extends beyond the particular petition/case so as to cover all similar cases.⁴⁰⁶ While Article 29.1.d of the Rules allows for joining petitions that are in the same stage, it does not allow the Commission to deal with petitions and cases at different stages.⁴⁰⁷ It also does not

400. MAXIMIZING JUSTICE, *supra* note 28, at 101.

401. *Id.*

402. *Id.* at 103.

403. In Europe, once the systematic nature of a case is identified, all other cases dealing with the same issue are put on hold. See THE RIGHT HONORABLE LORD WOOLF ET AL., REVIEW OF THE WORKING METHODS OF THE EUROPEAN COURT OF HUMAN RIGHTS 39 (2005), available at http://www.echr.coe.int/Documents/2005_Lord_Woolf_working_methods_ENG.pdf. That one case is litigated, and the subsequent decision, the “pilot judgment,” aims for the State in question to address the systematic problem at the national level for all those concerned. Thus, all subsequent cases are encapsulated within the “pilot judgment.” *Id.* The first European Court pilot-judgment procedure—concerning the so-called Bug River cases from Poland (*Broniowski v. Poland* (No. 31443/96), 2004-V Eur. Ct. H.R. and *Broniowski v. Poland* (Friendly Settlement), 2005-IX Eur. Ct. H.R.) was taken to a successful conclusion since new legislation was introduced and the pending cases were settled. See, e.g., *Kachel v. Poland* (No. 22930/05), 2008-IV Eur. Ct. H.R. See also *E.G. v. Poland and 175 Other Bug River Applications* (No. 50425/99), 1008-IV Eur. Ct. H.R., [http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-88774#{"itemid":\["001-88774"\]}](http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-88774#{). See also Comm. of Ministers (EC), Res(2004)3 of 12 May 2004 (on judgments revealing an underlying systemic problem). The pilot judgments have saved the European Court an enormous amount of time and labor and had helped to publicize its determination to find comprehensive solutions to systemic human rights problems. Helfer, *supra* note 22, at 148.

404. MAXIMIZING JUSTICE, *supra* note 28, at 103.

405. *Id.* at 104.

406. MAXIMIZING JUSTICE, *supra* note 28, at 103–04. For a similar proposal see Ramos, *supra* note 24, at 175.

407. MAXIMIZING JUSTICE, *supra* note 28, at 104.

provide for a clear mechanism establishing the effect of one decision on cases and petitions dealing with the same pattern of conduct.⁴⁰⁸

The Commission may also want to consider the option of “adjourning or ‘freezing’ the examination of all other related cases for a period of time.”⁴⁰⁹ If the Commission adopts this model, it must set certain conditions. First, it should limit the “freeze” to a set period of time or end the “freeze” if the State fails to show good faith efforts.⁴¹⁰ Second, it needs to confirm that the cases selected are truly legally and factually representative of the group and underlying systemic problems.⁴¹¹ Third, it should require the State to act promptly on the recommendations in the pilot decision.⁴¹² Fourth, it should continually keep petitioners in all cases informed about the ongoing procedure.⁴¹³ Fifth, the Commission needs to include in its recommendations or mandate that the potential friendly settlement ensures solutions to all similarly-situated victims and is appropriate to remedy the systemic human rights issues it has adjudicated.⁴¹⁴ The Commission should emphasize that it may resume examination of “frozen” cases at any time if the State fails to comply with the structural recommendations.⁴¹⁵ Pilot decisions function only if States comply with the decisions rendered in the pilot case. As the level of compliance with the Commission’s decisions is quite low, the utility of pilot decisions should be carefully analyzed. The Commission should include these pertinent provisions in its Rules. The use of pilot decisions should not be mandatory and

408. *Id.*

409. EUR. CT. H.R., THE PILOT-JUDGMENT PROCEDURE: INFORMATION NOTE ISSUED BY THE REGISTRAR 5 (2009), available at http://www.echr.coe.int/NR/rdonlyres/DF4E8456-77B3-4E67-8944-B908143A7E2C/0/Information_Note_on_the_PJP_for_Website.pdf.

410. *See id.*

411. *See id.* at 1.

412. *See id.*

413. *See id.*

414. *See Helfer supra* note 22, at 154.

415. MAXIMIZING JUSTICE, *supra* note 28, at 104. This appears to be the situation with the case of the dozens of petitions related to the process of confirmation of judges and prosecutors made by the *Consejo Nacional de la Magistratura* [National Judicial Council] (CNM) in Peru. The Commission had “called upon the State to find a comprehensive solution to the problem of judges not reconfirmed by the National Council of the Magistracy, and to request the State to submit to the Commission, within a period of one month counted from the date of notification of the instant report, a proposed comprehensive solution to the situation of all the prosecutors and magistrates who were not reconfirmed.” *See* Romeo Edgardo Vargas Romero, Petition No. 494-04, Inter-Am. Comm’n H.R., Report No. 20/08 (2008), available at <http://www.cidh.oas.org/annualrep/2008eng/Peru494.04eng.htm>. The absence of a pilot judgment mechanism, the Commission’s reluctance to proceed with the accumulation of all the petitions, the reticent attitude of some petitioners, and Peru’s lack of implementation of an integral remedy forced the Commission to spend time adopting at least six friendly settlement reports. *See* Reports Nos. 107/05, 50/06, 109/06, 20/07, 20/08 and 22/11, available at <http://www.oas.org/en/iachr/decisions/friendly.asp>,

instead, should provide the Commission enough flexibility to decide when it is pertinent to apply that procedure and when the use of pilot decisions should not lead to an adjournment of cases. In order to create an incentive for the State to resolve the problem, the Rules need to establish a fast-track procedure for those “unfrozen” cases and provide a stronger presumption that all these “unfrozen” cases will be filed with the Court immediately (given that the State accepts the jurisdiction of the Tribunal).⁴¹⁶

3. Petitions Intake System

The Commission should reform the way it receives and registers petitions.⁴¹⁷ Specifically, the Commission should take steps to increase the number of petitions submitted online and reduce the number of unacceptable petitions.⁴¹⁸ The online form should preclude the possibility of filing incomplete petitions. The Commission should also publish the Rules within the online petition system, with an explanatory note drafted in a more user-friendly manner, showing examples of petitions that are clearly unacceptable.⁴¹⁹ By being very explicit with these standards and examples, and transmitting them in a very simplified and user-friendly manner, the number of unacceptable petitions will be reduced and the transparency of the Commission’s standards increased.⁴²⁰

4. Continued Use of Archiving Decisions

The Commission should continue using archival decisions to eliminate inactive petitions and cases from its docket.⁴²¹ Nevertheless, archival decisions “should not depend automatically on procedural inactivity with respect to a petition, given that such a situation might

416. MAXIMIZING JUSTICE, *supra* note 28, at 104.

417. *Id.* at 100.

418. *Id.*

419. *Id.* See also, OFFICE OF THE HIGH COMM’R FOR HUMAN RIGHTS, STRENGTHENING THE UNITED NATIONS HUMAN RIGHTS TREATY BODY SYSTEM DUBLIN II MEETING OUTCOME DOCUMENT, 86 (2011) [hereinafter Dublin II]. Treaty bodies should give increased visibility to individual communications procedures, including the admissibility requirements, to facilitate their more effective use by individuals. *Id.* at 101 (The Office of the High Commissioner for Human Rights should develop and disseminate enhanced guidelines on submission of individual communications in order to assist towards the improvement of quality of submissions and reduce the number of inadmissible or manifestly ill-founded cases submitted to treaty bodies.).

420. MAXIMIZING JUSTICE, *supra* note 28, at 100.

421. See OAS Results, *supra* note 303, at 11.

arise because of delay by the Commission in processing the petition or for other reasons that have nothing to do with inaction on the part of the petitioner.”⁴²² The IACHR needs to keep in mind that a number of inactive cases are not necessarily inactive owing to absence of action on the part of the petitioner, but rather a delay on the part of the Commission. The delay should not operate automatically to the detriment of the victim or petitioner. As many petitioners or victims relocate for purposes of personal safety or due to worsening economics, the IACHR should proceed only when effective notice has been given to the petitioner, or when all reasonable steps have been taken to locate the petitioner. Also, as archiving is contingent on the filing of additional information, and as many victims and petitioners belong to communities traditionally excluded from legal protections, or which do not have the resources to do the documentation work requested by the Commission, the response time allotted should be appropriate.⁴²³

5. Friendly Settlement

The Commission should continue to make friendly settlement a high priority in its mission. The recently created specialized Friendly Settlement Group is an important first step. The Friendly Settlement Group should identify cases that are more likely to settle and encourage States and petitioners to attend mediation sessions and find a resolution to the situation.⁴²⁴

The Rules of Procedure allow the Commission to make itself available to parties at any point during the processing of a case.⁴²⁵ The Friendly Settlement Group should take advantage of this prerogative at the beginning stages of the processing of a petition, such as after the initial review when the Commission first requests observations from the State.⁴²⁶

Friendly settlement can also be a tool that addresses structural problems or recurring issues. The Commission should encourage friendly settlement to dispose of groups of similar cases.⁴²⁷ If a petitioner refuses to agree to a settlement that all other petitioners in the group agree on, publishing a report and not referring the case to the Court could be a remedy to those who did not settle.⁴²⁸ The Commission

422. Coalition Observations, *supra* note 338, at 11.

423. CEJIL Observations, *supra* note 137, at 11–12.

424. See MAXIMIZING JUSTICE, *supra* note 28, at 105–06.

425. See Commission Rules of Procedure, *supra* note 51, art. 40.1.

426. See MAXIMIZING JUSTICE, *supra* note 28, at 106.

427. *Id.*

428. *Id.*

may need to have a presumption that where there are holdouts to group settlements—i.e. one or two petitioners do not agree to the settlement, but a large number of petitioners do agree—the unsettled petitions will not be referred to the Court.⁴²⁹ The Commission would have to decide what ratio of holdouts to petitioners in agreement is necessary for such a presumption when writing the rule. Further, the rule would only involve a presumption that the case should not be referred to the Court. That way, if the petitioner had a strong reason for not agreeing to the settlement, the Commission could still consider the option to ignore the presumption and refer the case to the Court.⁴³⁰ The experience of class action settlements and the regulations related to objectors in the United States could provide guidance in this area.⁴³¹

It is crucial that new rules specify the effects of noncompliance with friendly settlement.⁴³² Currently, once the Commission adopts a report approving a friendly settlement, there is no possibility to continue with the petition or case even if the State does not comply with the agreement. This situation may cause petitioners to refuse to sign agreements because of the possibility of State noncompliance.⁴³³ The Rules need to provide for the re-opening of a case after a prudential amount of time has elapsed and if no substantial compliance exists.⁴³⁴

The IACHR should conduct more working visits to States and should emphasize friendly settlement in those visits. Commissioners can hold or facilitate mediation sessions during the working visits to resolve issues between petitioners and the State.⁴³⁵

429. *Id.*

430. *Id.*

431. *Id.*

432. HUMAN RIGHTS CLINIC, UNIV. OF TEXAS SCH. OF LAW, MAXIMIZING JUSTICE, MINIMIZING DELAY: STREAMLINING PROCEDURES OF THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS 106 (2011), http://www.utexas.edu/law/clinics/humanrights/work/Maximizing_Justice_Minimizing_Delay_at_the_IACHR.pdf

433. *Id.*

434. *Id.* The Commission may look at Article 37, Section 2 of the European Convention that allows the European Court to restore an application to its list of cases if it considers that the circumstances justify such a course. *See, e.g.*, Katić v. Serbia, App. No. 13920/04, 2010-II Eur. Ct. H.R. 1 (2010) (reinstating a case after failure to comply with the terms of a friendly settlement agreement).

435. *Id.* This proposal may require additional funds.

6. Follow-up Measures

Article 48.1 of the Rules should be amended to make the adoption of follow-up measures mandatory and not discretionary.⁴³⁶ The Commission should follow-up actively and more closely on cases by making detailed assessments on the status of each recommendation. In order to facilitate implementation and secure proper follow-up, the Commission should avoid vague language that merely indicates that States should “adopt necessary measures.”⁴³⁷ The Commission should specify as much as possible what sorts of measures would be sufficient.⁴³⁸ Additionally, the IACHR should create, and make public, clear criteria to evaluate whether, and to what degree, a recommendation has been complied with. In its review of the status of compliance with its decisions, the Commission should provide clearer information explaining what constitutes full and partial compliance.⁴³⁹

There is a clear correlation between full implementation of the decisions and reduction of the backlog. If States follow the Commission’s recommendations in individual cases, there will be a positive impact in similar cases. First, future violations could be prevented.⁴⁴⁰ And for similar violations that already took place, those similar cases could be solved by friendly settlements, shorter reports; even withdrawal from the case docket of the Commission or avoidance of its filing altogether.

Working visits are particularly appropriate to conduct follow-up measures. Thus, the Commission should conduct more targeted country visits. The agenda of these visits should include meetings with petitioners and the Government to discuss the measures taken to comply with the Commission’s and Court’s decisions, and with State officers with decision-making power and responsibility to implement key recommendations and decisions. Before these visits, the Commission should issue a public statement indicating the status of each case to be

436. *Id.* at 107.

437. *See, e.g.*, Basch, *supra* note 137, at 32.

438. *See* OAS Results, *supra* note 303, at 13. *See also* Dublin II, *supra* note 419, at ¶ 93 (discussing the UN treaty body system). “Remedies should, to the greatest extent possible, be framed in a way that allows their implementation to be measured. Treaty bodies should use targeted and focused remedial language and, where possible, be prescriptive . . . Proposed remedies should be structured around short- and long-term goals, specifying concrete steps to be taken by States.” *Id.*

439. The same recommendation has been put forth regarding the Court’s decisions. *See* Basch, *supra* note 137, at 32.

440. In fact, the Commission routinely recommends States to “adopt all necessary measures to prevent the recurrence of similar acts, in accordance with the responsibility to prevent and to guarantee the fundamental rights recognized in the American Convention.” *See* Martín Pelicó Coxic, Case 11.658, Inter-Am. Comm’n H.R., Report No. 80/07 (2007).

discussed with the parties. At the end of the visit, the IACHR should issue another press statement indicating the commitments assumed by the States to implement the recommendations, if any.⁴⁴¹

During each visit, the Commission should bring to the attention of the authorities not only those cases with merits decisions, friendly settlement or court judgments, but also other similar pending cases to address structural problems.

B. Management of the Procedure

1. Reduction of Duplication

The Commission has taken steps to eliminate duplicative steps in its process. These are small changes, but over the course of a day or a week, they add up. The less time spent on duplicative matters, the more time the Commission can spend on processing cases. For instance, only recently are States no longer notified by duplicate methods. It was not until mid-2011 that the IACHR started to notify States by just one method—since mid-2011, petitioners are notified by email or other methods only in the absence of email.⁴⁴²

2. New simplified format for admissibility reports

If the Commission does not adopt our recommendation to unify the admissibility and merits stages, the admissibility reports should be adopted in a simplified manner.⁴⁴³ The only topic that the Commission needs to address in each report is the one that the State contests in an explicit manner. If the State does not challenge any admissibility issue, the Commission should defer its treatment to the merits stage.⁴⁴⁴

441. See MAXIMIZING JUSTICE, *supra* note 28, at 108. Again, these additional visits may require additional funds.

442. *Id.* at 100.

443. See Ramos, *supra* note 24, at 173 (proposing that “the admissibility approach should be more concise, like that of the European’s human rights system and operate as a checklist, rather than a long description and legal analysis of the facts”).

444. The European Court also uses simplified summary decisions on established matters of law. The new Article 28(1)(b) of the European Convention empowers judges to rule, in a simplified summary procedure, not only on the admissibility, but also on the merits of an application, if the underlying question “is already the subject of well-established case-law of the Court.” European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols Nos. 11 and 14, June 1, 2010, C.E.T.S. 194, art. 28(1)(b). “This applies, in particular, to cases where an application is one of a series deriving from the same systemic defect at the national level; hence, a repetitive case.” Patricia Egli, *Protocol No. 14 To The European Convention For The Protection Of Human Rights And Fundamental Freedoms: Towards A More*

3. Adoption of Admissibility Decisions and Preliminary Revision of Merits Reports by a Working Group

If the Commission does not implement the recommendation to combine the admissibility and merits decisions, or even until such change comes into force, it should adopt admissibility reports through a working group composed of four members⁴⁴⁵ rather than by the plenary of the Commission. The plenary should, instead, focus on discussing merits decisions.⁴⁴⁶ The admissibility decisions could be adopted during the sessions or virtually when the Commission is not in session, leaving even more time for merits decisions during sessions.⁴⁴⁷ The other three Commissioners not participating in the admissibility discussion should form another working group to do an initial review of the merits reports in order to speed up their discussion in plenary. These changes would shift the Commission's attention during session to merits decisions.⁴⁴⁸

4. Commission's Use of *Per Curiam* Decisions

The Commission has used the *per curiam* tool in cases such as *Fierro*⁴⁴⁹ and *Thomas*.⁴⁵⁰ "Recently, the Commission made an explicit reference to 'the practice of adopting *per curiam* decisions' and declared two petitions inadmissible just in one paragraph, by referring to a previously decided petition."⁴⁵¹ The Commission should continue its practice of using simplified *per curiam* decisions.⁴⁵²

Effective Control Mechanism?, 17 FLA. ST. J. TRANSNAT'L L. & POL'Y 1, 13 (2007).

445. According to Article 17 of the Statute of the Commission, an absolute majority, four members, constitutes quorum. Commission Statute, *supra* note 50.

446. *Id.*

447. *Id.*

448. *Id.* at 102. See African Commission on Human and Peoples' Rights Resolution Establishing a Working Group on Communications and Appointment of Members ACHPR/Res.194 (L), available at <http://www.achpr.org/sessions/50th/resolutions/194/> (establishing a Working Group on Communications to meet twice a year during the intersession, and which may also meet prior to the Sessions of the African Commission).

449. César Fierro v. U.S., Case 11.331, Inter-Am. Comm'n H.R., Report No. 99/03 OEA/Ser.L./V/II.118, doc. 5 rev. 2 ¶ 37 (2003) (the Commission recalled a previous decision and decided to "adopt . . . for the purposes of this report its findings in the [previous case] and . . . analyze Mr. Fierro's circumstances in light of those findings").

450. Douglas Christopher Thomas v. U.S., Case 12.240, Inter-Am. Comm'n H.R., Report No. 100/03, OEA/Ser.L./V/II.118, doc. 5 rev.2 ¶¶ 39–41 (2003).

451. Soc. Sec. Contributions of Retired and Civil Servants - Physicians Union of the Fed. Dist. v. Brazil, Petition 989-04, Inter-Am. Comm'n H.R., Report No. 133/09 ¶ 21 (2009) available at <http://www.cidh.oas.org/annualrep/2009eng/Brazil989.04eng.htm>. See also, Social Security Contributions of Retired and Pensioned Civil Servants - UNAFISCO, CONAMP, et al.

The Rules should be amended to explicitly allow the Commission to issue *per curiam* decisions in cases that are substantially similar to cases that have previously been decided. *Per curiam* decisions would point to the past cases and merely declare that the facts and legal issues are the same, so that the petition or case is decided in the same manner as the previous decision. The Commission should articulate criteria on which *per curiam* decisions can be based and should make those criteria and the process of identifying similar cases fully transparent.⁴⁵³

5. Receipt of Information and Documents

The Rules should be revised to require the parties to present their evidence and documents at the earlier stages of the process. The Commission should follow the Court's Rules of Procedure that require the parties to submit all offered evidence in their initial submissions.⁴⁵⁴ Article 57 of the Court Rules provide only very limited exceptions—for example, only when the evidence was omitted “due to *force majeure* or serious impediment” or it “refers to an event which occurred after the procedural moments indicated.”⁴⁵⁵

Such a rule would encourage the parties to present all of their evidence early in the process, and allow the Commission to begin deliberations sooner, as well as allow both parties to see the strengths and weaknesses of their petitions and cases and to determine the desirability of a friendly settlement. This change can be implemented without sacrificing the fact-finding ability of the Commission and cooperation by States and petitioners if the rule is transparent and emphasized to the parties ahead of time. Of course, in order to be effective, a strict deadline for the receipt of evidence and information needs to be accompanied by a speeding up of the rest of the process.

6. Consistent Application of the Rules to Speed Up the Process

The Commission should be much more proactive in applying the procedural tools at its disposal to reduce the length of its procedure.⁴⁵⁶ The Commission should more frequently apply all the Rules that allow

v. Brazil, Petitions 1133/04 and 115-05, Inter-Am. Comm'n H.R., Report No. 134/09 ¶ 23 (2009) available at <http://www.cidh.oas.org/annualrep/2009eng/Brazil1133.04eng.htm>.

452. MAXIMIZING JUSTICE, *supra* note 28, at 103.

453. *Id.*

454. Commission Rules of Procedure, *supra* note 51, arts. 35.1, 36.1, 40.2, 41.1.

455. *Id.* art. 57.

456. *Id.* at 101.

it to speed up the process, particularly Article 36.4 that allows the Commission to join the admissibility and merits decisions in exceptional circumstances. Article 36.4 has enormous potential to help the Commission to reduce its backlog and speed up the process.⁴⁵⁷ So far, the Commission has applied the rule inconsistently, and mainly in death penalty cases.⁴⁵⁸ In the past, the Commission used to apply Article 36.4 in all petitions opened before the 2000 amendments, and which had been in the Commission for at least five years.⁴⁵⁹ Furthermore, the IACHR joined admissibility and merits decisions when the State did not respond to a petition. Apparently, these practices have been abandoned in recent years. When declining to use a procedural resource like the rule in Article 36.4, the Commission should state clearly why it chose to forego this time saving route.

Additionally the Commission should be much more explicit in explaining the different uses of procedural rules for similar cases or petitions. The 2013 revisions of the Rules make explicit criteria for joining the admissibility and merits stages. The IACHR should explicitly expand the justifications for joining the admissibility and merits phases to include reasons such as the length of time a petition is in the Commission's docket, and the situation of the victim or procedural economy.⁴⁶⁰

Article 29.d should also be more consistently used in order to accumulate petitions when two or more complaints address similar facts, involve the same persons, or reveal the same pattern of conduct.⁴⁶¹ So far, the possibility of accumulating petitions has not been systematically applied by the Commission.⁴⁶² The IACHR needs to continuously revise its docket in order to determine the potential application of this article as soon as possible.

If the Convention, the Statute or the Rules establishes specific deadlines for the Commission to take certain action, the IACHR should be very careful when the Commission does not follow those time stipulations.⁴⁶³ If the Commission does not comply with those deadlines, explicit, clear and careful explanations should be made publicly.

457. *Coalition Observations*, *supra* note 338, at 11 (underscoring “the importance that this mechanism may have for expediting the proceedings by making processing by the IACHR more efficient, without jeopardizing the right to defense and procedural due process”).

458. MAXIMIZING JUSTICE, *supra* note 28, at 101.

459. CEJIL Observations, *supra* note 137, at 9.

460. MAXIMIZING JUSTICE, *supra* note 28, at 101.

461. *Id.*

462. *Id.*

463. *E.g.*, American Convention, *supra* note 7, art. 51 (establishing that the Commission needs to refer the case to the Court within three months from the approval of the preliminary report); Commission Statute, *supra* note 50, art. 23.2 (requiring the Commission to adopt a merits

Finally, while preserving the necessary flexibility of its procedure, the Commission needs to be stricter in the application of its deadlines and in granting extensions. Articles 30.4 and 37.2 require that any request for extensions to be “duly founded.”⁴⁶⁴ The Secretariat should make clear assessment of the reasons for granting extensions. As Article 30.4 refers only to requests for extensions made by the States, the Commission needs to amend its Rules and practices to extend the requirement of duly founded requests to include those formulated by petitioners. In its reports the Commission needs to include the reasons for granting such extensions. The Rules should be amended to clarify the consequences of missing deadlines to the parties. Beyond the instances expressly mandated in the Rules of Procedure, the IACHR should reduce its requests to the parties for observations to an absolute minimum.⁴⁶⁵

7. Transparency and data

In the last fifteen years, the IACHR has adopted several initiatives that provide more information on its work and clear criteria for the type of decisions that it adopts.⁴⁶⁶ Nevertheless, greater transparency is required for a more effective and efficient Commission in dealing with its backlog and delays. For example, the Clinic asked the Commission how many cases were awaiting Articles 50 and 51 reports. The Commission’s response was simply to say that the “Commission does not currently gather the statistics requested.”⁴⁶⁷

The Commission can increase support from all the involved actors if it publicizes more information. Examples of useful information includes information on the way it handles cases and petitions, their status, and when the Commission disposes them. The IACHR has consistently insisted that States should produce more data on a variety of issues. The IACHR considers “data systems [to be] essential in order to be able to analyze possible causes and trends and to evaluate the

report within 180 days if a friendly settlement fails).

464. MAXIMIZING JUSTICE, *supra* note 28, at 102.

465. *Id.*

466. For instance, the Commission started to publish information on the precautionary measures that it adopted in 1997 and on the statistics on the case system in 1998. See Inter-Am. Comm’n H.R., *IACHR Annual Report 1997*, OEA/Ser.L/V/III.39 doc.5, at ch. III.2.A, available at http://www.cidh.org/annualrep/97eng/chap.3.htm#_ftn4; Inter-Am. Comm’n H.R., *IACHR Annual Report 1999*, OEA/Ser.L/V/III.47 doc.6, at ch. III.B, available at <http://www.cidh.org/annualrep/99eng/Chapter3.htm#2>.

467. Commission’s Answers, *supra* 58, at 16.

response[s].”⁴⁶⁸ I believe that those same conclusions and recommendations are applicable to the Commission’s own information on the processing of petitions and cases. Making more information available to the public will increase both support and public accountability.

The Commission could learn from the United States Citizenship and Immigration Service (USCIS) website and the sheer amount of information available to the public on it.⁴⁶⁹ The IACHR could publish more statistical information such as a backlog tracker, the type of claim of each petition and case, the timeline of the cases and petitions, the status of cases and petitions divided by country and stage of the procedure, number of cases and petitions in friendly settlement

468. OAS, INTER-AMERICAN COMM’N H.R., ACCESS TO JUSTICE FOR WOMEN VICTIMS OF VIOLENCE IN THE AMERICAS, OAS/Ser.L/V/II, doc. 68 rev. ¶ 181 (2007). The IACHR also recommended States to:

[c]reate and improve systems for recording statistical and qualitative data[;]

...

[s]trengthen data records on cases . . . to ensure that they are uniform, reliable and transparent[;]

...

[i]mplement measures so that the data systems more adequately reflect the situation[;] . . . [t]ake measures so that data systems are able to disaggregate the data by sex, age, race, ethnic origin, and other variables[;] . . . [k]eep reliable, up-to-date statistics[;]

...

[i]nstitutionalize means and methods to share information within a diversity of sectors –centers and state entities that deal with this topic, the victims, their communities, the private sector, academia, international organizations and civil society organizations- and facilitate collaboration and circulation of information between producers and users[;] . . . [and u]ndertake efforts and initiatives to get the available information to the general public in a format that is responsive to the needs of a variety of audiences and populations of differing economic and educational levels, different cultures and different languages. The safety and privacy of the victims should be paramount in this reporting process.

Id. at 120–21.

469. The United States Citizenship and Immigration Service’s (USCIS) use of technology to bolster transparency, and its similarity to the Commission as a quasi-judicial body, makes it an appropriate comparative study. The Commission could learn from the 2009 USCIS redesigned website and the amount of information available to the public on it. The website (<https://egov.uscis.gov/cris/Dashboard.do>) provides applicants and their attorneys with information about case status (e.g. where in the process their case is at). Once a petitioner enters in her case number, she will see a dot highlighted over which part of the process her case is at. There is also a summary of each stage of the adjudication process, so that the petitioner can know what to expect. From here, she can also see how long she might expect before her case is fully adjudicated with a decision. The USCIS website gives detailed instructions when downloading an application form on how to fill out the form, what type of evidence should be submitted, and what kinds of cases “win,” versus what types “lose,” so as to ensure that its public and petitioners are fully informed. The website (<https://egov.uscis.gov/cris/processTimesDisplayInit.do>) also provides information on the average time that it takes for a particular case to be adjudicated by each individual office.

negotiations specified by country, number of cases with Article 50 reports approved divided by country, number of petitions not transmitted by the Secretariat disaggregated by country and reason for the decision, or data on petitions and cases disaggregated by sex and gender, ethnicity, and age of the victim(s). Furthermore, the Commission should publicize its rationale for when it does or does not apply time saving rules.⁴⁷⁰

C. Administration and Institutional Culture

1. Performance Management

The Commission has announced plans to create a performance management scheme for 2011-2015.⁴⁷¹ As part of this plan, the IACHR intends to emphasize consistency in drafting reports, and will create methods for staff to use their time efficiently and effectively.⁴⁷² The Registry's performance management scheme can serve as a model for performance management throughout the Commission. For example, the Commission stated that the average time for review of a new petition is twenty-five months.⁴⁷³ The Commission should develop an internal consensus on what constitutes a reasonable time for processing a petition or case so that standards can be developed for determining whether its effort to combat delay is progressing.⁴⁷⁴ The establishment of indicative timeframes must not be construed as a "sunset clause," requiring that a petition or case be dismissed as a consequence of missing the target timeframe. Such an approach would not only harm the victims who do not control the pace of adjudication, but it would mainly benefit the States—which do not provide the Commission with the necessary funds to process petitions and cases more expeditiously in the first place.⁴⁷⁵ Also, the Commission needs to attend to the unique needs of each case and petition, since the reasonability of one case or petition is not automatically reasonable in another. In other words, the reasonableness standard should be indicative of the expected timeframe,

470. See OAS Working Group, *supra* note 15, at 12; MAXIMIZING JUSTICE, *supra* note 28, at 107.

471. STRATEGIC PLAN PART II, *supra* note 162, at 4–5.

472. *Id.*

473. MAXIMIZING JUSTICE, *supra* note 28, at 96.

474. *Id.* See also OAS Working Group, *supra* note 15, at 12 (recommending the Commission to adopt at least an indicative timeframe for each of the stages of the procedure).

475. Coalition Observations, *supra* note 338, at 11.

but have enough flexibility to accommodate the needs of a particular petition or case.

The Commission should also measure the performance of each of the four regional groups and make the results public. The Commission can use performance measurement and management to determine where it needs to add more resources, help its staff understand their goals, and learn more about its own strengths and weaknesses.⁴⁷⁶ The lawyers of the Commission can also understand their own practices better. Moreover, the IACHR can examine the practices of particular regional units that may be more efficient than other units and try to replicate those practices throughout.

There may be some concern within the Commission that implementing performance measurement will affect its culture and goals. However, performance measurement and management is not always about individual actors or transforming the workplace into a mechanical environment.⁴⁷⁷ The use of flexible targets, rather than hard-and-fast goals, is an example of the use of performance measurement and management within the Commission.⁴⁷⁸ The Registry has shown that such a system can be effectively integrated with the Commission's culture.⁴⁷⁹ Furthermore, perhaps a change in culture is needed if backlog and delays are embedded in that culture. In fact, researchers have shown that changes in case-processing speed require changes in the attitudes and practices of all members of the community involved in such systems.⁴⁸⁰ Researchers have demonstrated that "both speed *and* backlog are determined in large part by established expectations, practices, and informal rules of behavior" of those administering the system and litigating.⁴⁸¹ Those expectations, practices and behaviors were termed "local legal culture."⁴⁸² Since both the adjudicatory bodies and the litigants have adapted to a given pace of adjudication, these expectations and practices must be overcome for there to be any successful attempt to increase the pace of litigation.⁴⁸³

A potential shortcoming to avoid is that the lawyers at the Commission may be tempted or even required to sacrifice higher quality to improve their numbers. It is important to note that the Commission has stated that in order to speed up the process it "will not . . . sacrifice

476. MAXIMIZING JUSTICE, *supra* note 28, at 97.

477. *Id.*

478. *Id.*

479. *Id.*

480. Steelman, *supra* note 162, at 151.

481. *Id.* at 153.

482. *Id.*

483. *Id.*

the quality of its decisions or deliberation process.”⁴⁸⁴ The Secretariat management team and the Commissioners must not let performance measurements based on numbers diminish the quality of reports. The Commission’s effectiveness strongly relies on the persuasiveness of its decisions.⁴⁸⁵ At the same time, the Commission and its Executive Secretariat should find the proper balance between an intended goal of perfection and the need to dispense cases in a timely manner.⁴⁸⁶

2. Integration of the so-called “Registry” approach to the Rest of the Commission

The creation and expansion of the “Registry” has significantly contributed to the System’s efficiency.⁴⁸⁷ Its model of time-measurement as well as its targeted goals should be more clearly incorporated within the Commission. The backlog and the delays do not affect only new petitions, but rather, they appear throughout the process of the Commission. For that reason, the Commission should redistribute the resources allocated to the Registry throughout the Executive Secretariat and expand the Registry’s methodological approach to the rest of the areas responsible for processing petitions and cases.⁴⁸⁸

3. Technology

The Commission should take proactive efforts to embrace and promote technological changes. The Commission has instituted a program called PPP that digitizes communications from individual petitioners and States, so that they may check the status of their matters via the Internet.⁴⁸⁹ However, the Commission does not have a program that digitizes petitions and cases older than 2007.⁴⁹⁰ Therefore, the Commission needs to digitally process all petitions and cases still pending in its docket.

The databases of the IACHR should be made publicly available. The parties to the petition and cases should be able to track the status of their petition or case. Parties should also be able to submit additional information and documents online. In fact, the States had asked the

484. Position Document, *supra* note 59, at 13.

485. See Slaughter & Helfer, *supra* note 322, at 318.

486. MAXIMIZING JUSTICE, *supra* note 28, at 97.

487. *Id.* at 98.

488. *Id.*

489. *Id.* at 99.

490. *Id.*

Commission to improve mechanisms to enable states, petitioners, and concerned victims to access records of petitions and cases in electronic format in order to encourage the prompt solution of said cases.⁴⁹¹

Other telecommunication measures should be implemented to speed up the analysis and discussion of cases and petitions. Meetings of pre-session or inter-session working groups or the plenary of the Commission could take place by telephone or videoconference. The IACHR should also convene hearings via videoconference with the parties in order to advance friendly settlement negotiations and, when appropriate, to receive information or testimonies.

IX. CONCLUSION

There are three overarching obstacles that the Commission faces in its case system: a large backlog of petitions waiting to be dealt with, a long time period before petitions and cases can be fully resolved, and an insufficient number of petitions and cases fully resolved with a merits decision. The Commission's changes in the 2000 Rules of Procedure have exacerbated these problems. In splitting the Commission's decision into Admissibility and Merits, the rule change added another step that further delayed the processing of petitions and shifted the emphasis to the preliminary phases of the procedure.

There are several lessons from the study of the process of the Commission, its delays, and backlog. The case of the Commission supports the proposition that a goals-based analysis is necessary in order to assert the effectiveness of an adjudicatory body. It also demonstrates that the context in which it operates offers possibilities and constraints in achieving those goals. The goal-based approach provides tools to understand how the Commission operates and, in particular, to assess how its structure, process and outcomes contribute to or undermine its effectiveness.⁴⁹² Particularly, the multiplicity of goals that the Commission pursues challenges the idea that compliance with its recommendations is the only, or even the main, measure of its effectiveness.⁴⁹³

Every international human rights system confronts the same paradox—the States that created the system are at the same time the subject of control. Although the States may confer a number of powers on the supervisory organs of the system, States will generally retain control over its functions among them by selecting the members and

491. See OAS Working Group, *supra* note 15, at 12; OAS Results, *supra* note 303.

492. Shany, *supra* note 321, at 270.

493. *Id.*

controlling the funding of the supervisory bodies. States also play the central role in enforcing their decisions. This paradox creates institutional and political tensions, which interfere with the work and effectiveness of these organs.⁴⁹⁴ The current backlog of the Commission provides a clear example of this paradox. States do not fund the IACHR adequately. States do not submit information or evidence in time, do not participate or agree on enough friendly settlements, and do not comply with the Commission's recommendations.

Although human rights are given great importance in the public resolutions of the OAS, and the strengthening the IACHR is designated as a priority, the Commission is viewed as a thorn in the side of those member states that have continuing human rights problems.⁴⁹⁵ Many States within the OAS continue to fear the work of the Commission.⁴⁹⁶ Interestingly, many OAS members see the IACHR as far too effective and thus try to limit its impact. Many proposals coming from States do not seem to be constructive but rather attempts to undermine the System in general and the Commission in particular.⁴⁹⁷ In this article, I made several references to recommendations issued by the OAS Working Group, which was created with the idea of strengthening the Commission. In fact, that Working Group clearly had, in the view of many, the intention of diminishing the effectiveness and efficiency of the Commission.⁴⁹⁸ Thus, I included only those recommendations that coincide with those formulated by other actors or that help us understand the constraints that the Commission faces in dealing with these issues.

Any attempt to comprehend the functioning of the Commission's procedure must therefore take into account the hostile environment in which it operates. As such, the context in which the Commission operates supports a goal-based approach to measure its effectiveness as it demonstrates the constraints that hinder international adjudicatory bodies in their particular political and institutional environment.⁴⁹⁹

494. *Id.*

495. *Id.*

496. See, e.g., Jorge Rhenán Segura, *Las Reformas al Sistema Interamericano de Derechos Humanos*, LI, 113/118 BOLETIN DA SOCIEDADE BRASILEIRA DE DIREITO INT'L 124 (1998).

497. Jo M. Pasqualucci, *The Inter-American Human Rights System: Progress Made and Still to be Made* 52 GERMAN Y.B. OF INT'L LAW 181, 183 (2009).

498. Victoria Amato, *Una Mirada al Proceso de Reflexion Sobre el Funcionamiento de la Comision Interamericana de Derechos Humanos [A Look at the Process of Reflection on the Functioning of the Inter-American Commission on Human Rights]*, 16 APORTES DUE PROCESS LAW FOUND., 4 (Mar. 2012), available at <http://www.dplf.org/uploads/1332509827.pdf>.

499. Shany, *supra* note 321, at 261.

However, not all of the Commission's problems are attributable to lack of funding or State support. Not all of the solutions depend upon finding additional money. An efficient organization is one that uses what it has to maximize its output. In this sense, the Commission's chronic lack of financial and human resources does not justify its inefficiency. The OAS should of course adequately fund the Commission and it is the principal party responsible for the current backlog and delays. Nevertheless, this does not excuse the Commission from attempting to be as efficient as possible with the limited resources that it has.

The Commission's situation also demonstrates how a human rights body must find a proper balance between efficiency and effectiveness. This is not an easy task as efficiency and effectiveness are hard to measure, and adjudicatory bodies tend to have multiple goals that can and do contradict each other. With respect to the Commission, its resource constraints and multiplicity of goals mean that the Commission must make difficult decisions about which tasks to emphasize and how to balance competing demands. The resource constraints also mean that efficiency within the Commission is vital to its success. In balancing its efficiency and effectiveness, the Commission must consider its broader goals, while also realizing that the growing delays may thwart its ability to actually address the problems of petitioners.

The pace of adjudication is closely tied to the goals of the adjudicatory body and expediency does not always contribute to effectiveness. Time may be required to accommodate the needs of the victims as they prepare evidence, secure State engagement, and provide a space for cooperation and fruitful dialogue. At the same time, excessive delays could hamper the overall effectiveness of the System. The lack of response to the vast number of petitions by the Commission, and the delays and inconsistencies in their resolution frustrates the victims, petitioners and States, and creates distrust in the System. This often subjects the victims to a process of re-victimization.

Finally, the case of the Commission demonstrates that in articulating recommendations for an international adjudicatory body, the international community should have realistic expectations and understand the value of certain delays and of a flexible process.⁵⁰⁰ At the end of the day, the study of the Commission indicates that the overriding interest of the process and the outcome of such a process is the fulfillment of its overall goals, not expedience.

500. Whiting, *supra* note 25, at 360–61.