

CEJIL GAZETTE

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EDITORIAL

THE NEW RULES OF THE INTER-AMERICAN COMMISSION AND COURT ON HUMAN RIGHTS

In 2001, the new rules of the Inter-American Commission and Court of Human Rights (from here on referred to as "the Commission" and "the Court") took effect. They will significantly change the Inter-American system. The new rules change the system of litigating cases by giving greater importance to the position of the victim, as well as by organizing and simplifying the proceedings. The new rules present numerous challenges for NGOs, the victims, their representatives, the states, and other agencies that form part the Inter-American system.

Among the reforms, we would like to highlight the establishment of a procedure used to determine the submission of cases to the jurisdiction of the Court with the active participation of the petitioners, and the concession of independent standing to the victims and their representatives before the Court. These changes permit the victims and their representatives to take on a central role in the proceedings. The possibility to gain access to the Court's jurisdiction is greater, and thus assures the probability of obtaining a binding sentence in the victim's favor. This will also give the victims autonomous defense in front of the Court without weakening the Court's important role. In fact it will give the Court the privileged possibility of strengthening the position of the victims in the litigation process. As a corollary to this new mechanism, the forwarding of cases to the Court will permit that a majority of the victims of human rights violations will have the opportunity to be listened to by the highest court in the Americas.

One of the most important consequences of the reforms consists in a change in the dynamic of the Inter-American System. When faced with the possibility that a larger number of cases will be submitted to the Court, states will have greater incentives to actively involve themselves in the effort towards a friendly settlement within the jurisdiction of the Commission. The

Commission will release fewer reports about the background of the cases that condemn the states and will have a less confrontational role in the scope of their jurisdictional activities, while the court will solve more cases. This could generate resistance and unjust accusations with respect to the Court, similar to what has happened in the past with the Commission. Another significant change in the system's dynamic is an increase in the evidence put forth and the complexity of the arguments presented, in order to adapt the litigation work to the standards of proof and development of jurisprudence set by the court.

In addition, in accordance with the new regulations, the Commission will release admissibility reports for the majority of cases under its consideration. This reform expands the process because in practice, admissibility reports have not had the desired positive result of initiating friendly settlements, the majority of which have been reached after the issuance of an Article 50 report. Using the current regulations to expedite the process, the Commission should consider the unification of the admissibility reports and the reports on the merits if petitions have been pending for more than one year. The Commission should also consider a change in the format of admissibility decisions to expedite the process.

There are various areas in which the complaint procedure needs additional development in the form of guidelines, clarification, or a change in focus. How will a reparations claim be prepared in the initial petition before the court? How will discussion on the merits of cases develop before the Commission? What will be the procedures for cautionary measures? How will the independent representation system develop in practice before the Court?

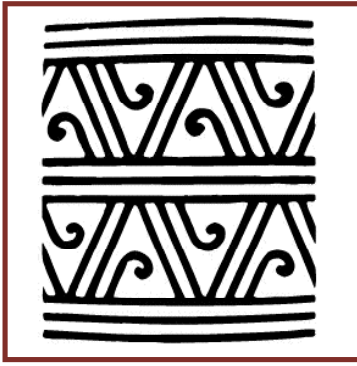
Many questions about the implementation of the new rules remain unanswered. Among oth-

ers, what resources will the Commission and the Court use to fulfill their responsibilities? How will states respond to a greater number of sentences from the court? Will the states commit more resources to the system of protection, or to its role of collective guarantees of the system? How will the proof of the victims be solved when they do not have any other recourse?

Through the rule reforms, the agencies of the system have heightened the protection of people in the Americas. However, we would like to call attention to two obstacles that could work against effective regional protection. The first possible obstacle is the spreading of a tendency towards restrictive access to the Court. This is one of the potential outlets to resolve the increase in petitions caused by the new procedure, an increase that will occur even without an increase in the number of cases. The system's bodies could raise the bar of admissibility, make the system of archiving cases more flexible, or take restrictive positions in the establishment of human rights violations. This is a risk that the systems own members have warned of, and which is hinted at in the Commission's new rules, but should be avoided in order to guarantee victims of human rights violations access to the regional system of protection.

The second obstacle has to do with the lack of resources. International regional protection, access to the Court, and independent representation of the victims in the whole international process will just be a commitment on paper if the resources of the system are not substantially augmented to enable the various bodies to confront a rise in the volume of work, and if a system is not established to cover the costs of access for the victims and their representatives. The states of the region have a crucial responsibility, not only because they are guarantors of the system of protection, but also because this

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REVIEW OF THE NEW PRODECURE FOR INDIVIDUAL PETITIONERS BEFORE THE COMMISSION AND THE COURT

Litigation before the Inter-American Commission for Human Rights is initiated with the submission of a petition which alleges a violation of a human right protected by one of the following instruments: the American Declaration on the Rights and Responsibilities of Man, the American Convention on Human Rights, the Additional Protocol on Human Rights on the Topic of Economic, Social and Cultural Rights, the Relative Protocol on the Abolition of the death penalty, the Inter-American Convention on the Forced Disappearance of the People, and the Inter-American Convention to Prevent, Punish and Eradicate Violence Against Women.

Before forwarding the relevant parts of the petition to the accused State Party, the Commission will undertake an initial revision of the petition in order to evaluate whether it meets the requirements established by article 28 of its rules of procedure. If the Commission decides that the petition meets with the basic requirements, the Commission will forward the petition to the State, requiring a response within two months. The State may apply for an extension of the time limit, nevertheless, the Commission will not grant extensions that exceed three months from the date that the petition was first sent to the State. After this initial round, the Commission can request that the parties present additional observations, which can be presented in a brief or a hearing, before deciding on the admissibility of the petition.

Once the parties' positions have been considered based on elements pertinent to admissibility (intra alia, exhaustion of internal recourses, compliance with the time limit for presenting petitions, duplication of procedures), the Commission will rule on the matter, publishing a report on its admissibility or inadmissibility. If it adopts the admissibility report, the petition will be registered as a case and the merit proceedings will begin.

With the opening of the case, the Commission will set a time limit of two months for the petitioner to present their observations on the merits, which will be forwarded to the denounced State with the objec-

tive of having the State submit its observations within the time limit of two months. Before arriving at a decision on the merits of the case, the Commission will give the parties other opportunities to express their interest in initiating a friendly settlement process. Therefore, according to the new rules, the discussion of merits will precede the Commission's gesture to facilitate a friendly settlement. If the parties manage to arrive at a friendly settlement, the Commission will approve a report with a brief description of the facts and the agreed settlement. If a friendly settlement cannot be obtained, the Commission will continue processing the case.

The Commission will prepare a report on the merits of the case in which it will examine the allegations, the proof, and the information supplied by the parties or collected by the Commission through in loco visits. If the Commission establishes that there was a violation committed by the State, it will prepare a preliminary report with propositions and recommendations that will be transmitted to the State. The recommendations will have a time limit set by the commission within which the State can present its response and adopt the recommended measures. If the State has ratified the Inter-American Court's contentious jurisdiction, the Commission will notify petitioners with the goal that the parties will present their positions on the case's submission to the Court. If the State in question has accepted the Court's jurisdiction and the Commission considers that it has not complied with the recommendations in the merit report, taking into account what was sustained by the petitioners, the Commission will submit the case to the Court. In those cases that are not submitted to the Court but the matter has yet to be resolved, the Commission can release a definitive report containing its opinion, final conclusions, and recommendations.

Similar to a friendly settlement report, when a report on merits is published the Commission will be able to take the cautionary measure that it deems most appropriate, request information from the parties, or hold a hearing with the aim of verifying

compliance with the friendly settlement accords or recommendations.

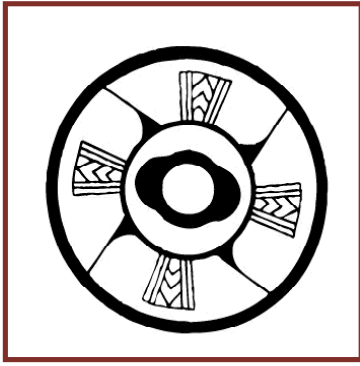
The Commission will begin the process before the Inter-American Court by presenting a complaint. The Court will inform the State of the submission of the complaint, the identity of the original complainant, as well as the identity of the presumed victim, the identity of his or her relatives, and of their representative.

The representatives will have 30 days to independently submit their arguments and proof to the Court. The State will have a time limit of two months to pose its preliminary objections together with its brief contesting the complaint. Once the State has answered the complaint, the Court will announce the date that the oral proceedings will begin, as well as set dates for hearings if they are necessary. The proceedings before the Court consist of various stages: preliminary objections, merits, and reparations. 🔥

EDITORIAL *(Continued from page 1)*

was one of their most important claims. On a dark note, when the General Assembly of the OAS met in Costa Rica in June of 2001, a majority of the states demonstrated a lack of true willingness to strengthen the system and endow the bodies of protection with essential resources, allowing them to function to their fullest capabilities.

Many steps have been taken to improve judicial certainty, the economic process, and the effectiveness of the system. We hope that in the coming months the practices of the system, the answers of the states, and the actions of the representatives of the victims or petitioners will transform into strengthened international protection throughout the region. 🔥



THE NEW RULES: PRACTICAL RECOMMENDATIONS FOR CASE LITIGATION

Aspects that petitioners should take into account in order to make litigation of cases suitable before the Inter-American system according to the Commission and the Court's new rules.

• Necessary documents before presenting the initial petition

The new procedure demands the presentation of a larger portion of information in the friendly settlement stage, the merits stage, and at the actual time of presentation before the Court. Part of the information detailed below should not be provided to the Court; rather, it should be provided after the presentation of the initial complaints. However, it is highly recommended that one rely on this information when the initial complaint is being presented.

1. Victims and/or relatives' mandates. In the beginning, the mandates do not need to be notarized.
2. Victims' and/or relatives' address, telephone number, and contact place or person.
3. Victims' and/or relatives' position on the submission of the case to the Court.
4. Available expert documents, testimonies and evidence. This requires obtaining copies of relevant domestic actions taken, and preferably a complete copy of legal and administrative actions taken in the local system.
5. The complete names of witnesses and experts, with all of the necessary information to locate them and the subject of their testimonies and expertise. This information should be provided during the debate on the merits of the case because the will of the witnesses and experts to testify before the Court can vary as a function of security conditions.
6. Reparation and cost claims. This demands presenting the same elements of evidence and

law to the Commission that under the old regulations were submitted at the time that the brief on reparations was presented (art.43.3e. of the Commission Rules (RC) and 33.1 of the Court Rules (RCourt). It is then crucial to ask the victims and/or their relatives about the due reparations needed to compensate them for the damages done, and to avoid the reoccurrence of such violations in the future. For example, in the case of the violation of the right to life, part of the information that is required to determine the material damage includes: profession, age, life expectancy in the country, civil status, children, salary, expenses for seeking justice at the local and international levels, etc. It is fundamental to collect documents that back up the aforementioned information. With respect to other measures, one might consider the investigation and punishment of those responsible, legislative reforms, monuments, etc.

• The new rules clarify the list of rights which one can allege as violated

Article 23 of the Commission Rules permits submitting petitions for the violations of rights protected in seven Inter-American instruments: (1) the American Declaration of Human Rights, (2) the American Convention on Human Rights, (3) the Additional Protocol on Human Rights on the Subject of Economic, Social and Cultural Rights, (4) the Relative Protocol for the Abolition of the Death Penalty, (5) the Inter-American Convention to Prevent and Punish Torture, (6) the Inter-American convention on the Forced Disappearance of People, and (7) the Inter-American convention to Prevent, Punish and Eradicate Violence Against Women. If these instruments are being utilized, it is not excessive to take into account that the new Court Rules, unlike the old ones, expressly make it a possibility to allege the violation of the rights within one of the categories. Each one has its own established requisites that the violation can meet.

• The identity of the petitioner will not be revealed unless there is expressed authorization

If we, the petitioning organizations, want the State to know our identities we should expressly signal that that is the case. If not, the name of our organizations will not be revealed (Art. 28.b and 30.2 RC)

• Fortification of Proof

In presenting observations on the merits of the case, one should strengthen the evidence. It is important to keep in mind when presenting observations so that the Commission can evaluate the merits of the case (article 38.1 RC) that the proof should remain as solid as possible, since the quality of proof available is one of the elements that the Commission will take into account when deciding whether or not to submit the case to the Court (44.2.e. RC).

• The best possibility to resolve cases through friendly settlements

Given that the possibility that a case will go to the Court is better under the RC, states are more likely to be willing to resolve the case in a friendly way. Because of this, it is important to be certain of the victims' and their relatives' desired reparations, as well as the limits that the system imposes on the attainment of a friendly settlement within the parameters of the Convention. In the case that a friendly settlement is reached, the victim's consent will be requested (Article 41 RC).

• The petitioners should express to the Commission their position on the case's submission to the Court

The rules offer the opportunity for petitioners to present their position on the submission of the



case to the Court within 30 days after the release of the preliminary report (known as the article 50 report). It is important to take into account that under the RC, the general rule is that the cases are going to be sent by the Commission to the Court's jurisdiction, except for a decision based on the majority of its members fundamentally taking into account the attainment of justice in the case (art. 44 RC). Additionally, it is important that the document petitioners present contain aspects of arguments the Commission takes into account when deciding whether or not to send the case to the Court. They should argue on (1) the possibility of obtaining justice, (2) the violation's nature and the severity, (3) the need to develop or clarify the system's jurisprudence, (4) the decision's effect on the member states' legal orders, and (5) the quality of evidence.

Additionally, the petitioners should present within this time limit:

1. The position of the victim and/or his or her relatives if they are not petitioners.
2. The data on the victims and relatives.
3. The foundations upon which the Commission bases its decision to send the case to the Court.
4. The documented, witness, and expert proof.
5. The claims for reparations and costs.

Since the time limit to state a position and submit additional information is one month, it is fundamental to rely on the pertinent information in advance of the time limit.

• **The hearings should be requested in writing a minimum of 40 days before the start of the hearings**

The objective of the hearings and the participants' identities should be indicated (article 62.2 RC). In accordance with article 62.1 RC, the hearings can have, among other things, the goal of assessing the admissibility of petitions,

beginning or developing the friendly settlement process, proof of the facts, the merits of the matter, and the pursuit of recommendations.

• **Witnesses and experts should be proposed and identified in the same petition**

Similarly, the goal of the testimony or expertise should be noted. Given that the Commission will notify the other party of the witnesses and experts proposed by the contending party, it is important to take into account when the witness or expert's identity should be protected. This should be brought to the Commission's attention in order to keep the identity in confidence (article 63.5 RC). 🔥

THE INTER-AMERICAN COURT'S NEW SENTENCES

1. Villagrán Morales Case

Petitioners: Casa Alianza and CEJIL

On May 26, 2001, the Court handed down a decision on reparations in this case. In the merits sentence, the Court concluded that the government of Guatemala is responsible for the tortures and deaths of five street children, as well as for denying justice, and violating children's rights. Moreover, in the reparations sentence, the Court ordered the state of Guatemala to pay around half a million dollars to the victims' mothers and siblings for material and moral indemnity. The Court also ordered the construction of an educational center that will bear the youths' names. Additionally, the Court declared that "the state of Guatemala should include in its internal law, in conformity with Article 2 of the American Convention on Human Rights, legislative, administrative, and whatever other measures necessary to conform the Guatemalan norm to article 19 of the American Convention on Human Rights."

2. Barrios Altos Case

Petitioners: APRODEH, FEDEPAZ, IDL, COMISEDH and CEJIL

On March 14, 2001, the Court handed down a decision on this case's merits. Through this sentence, the Court declared that the state of Peru had violated the right to life, personal integrity, judicial guarantees, and legal protection in their persecution of the victims which resulted in deaths and serious injuries because of a military operation carried out by the "Grupo Colina". Similarly, the Court established that laws number 26479 and 26492, which conceded amnesty to all military, police and civil functionaries who could be the object of trials for human rights violations between 1980 and 1995, "are incompatible with the American Convention on Human Rights and, consequently, lack legal effect." The Court ordered that the State investigate the facts in order to determine who the people responsible for the violations are.



The Inter-American Court's reparations hearing. Villagrán Morales (March 12, 2001)



NEWS

A GOODBYE TO THE EXECUTIVE SECRETARY, JORGE TAIANA

Jorge Taiana served as the Executive Secretary of the Inter-American Commission, which under his direction took important steps toward defending and promoting human rights in the region. During Ambassador Taiana's tenure, the Commission increased its political relevance and judicial strength in cases. In this period an unprecedented number of cases were submitted to the Inter-American Commission, the Commission released important decisions and country reports, and created various Rapporteur offices, among them the Rapporteur Office on Freedom of Expression, which offered a new model of action for the Commission. At the same time, during these years the Commission had to live through political struggles that put the regional system of protecting of human rights' very existence, as we knew it at risk.

Jorge Taiana, with his characteristic acuteness, worked together with the members of the Commission to strengthen the system, overcome obstacles and improve international protection. The accomplishments translate into more lives saved, more people protected, more victims gaining justice, and better democracies. For your important work, your commitment and your achievements: Many thanks! ! 🍷

CONGRATULATIONS TO SANTIAGO CANTON, THE NEW EXECUTIVE SECRETARY

The prestigious Argentine attorney, Santiago Canton, was designated as the Inter-American

Commission's new Executive Secretary. Santiago Canton has been a familiar figure in the Inter-American system since he assumed the office of Special Rapporteur for Freedom of Expression in 1998.

An attorney from the University of Buenos Aires with postgraduate studies at the Washington College of Law, the Commission's new Executive Secretary has notable experience in the field of human rights and promotion of democracy and he has stood out in recent years in the hemispheric development and projection of the office of Special Rapporteur for Freedom of Expression. During his work as Rapporteur, Santiago Canton has demonstrated his independence, determination, and creativity which has earned him the respect of non-governmental organizations, journalists and governments.

The Commission confronts a great many challenges in its effort to accomplish strong international protection. Some of them have been described in our editorials: How to better the Inter-American System's effectiveness? How to assure that women, children, indigenous peoples, and people of African descent benefit from this protection? How to guarantee that the system will be relevant throughout the whole region? How to ensure economic, social, and cultural rights? Faced with these challenges and with the best wishes, CEJIL wishes Santiago Canton a fruitful effort as Executive Secretary. 🍷



The drawings that appear in The Gazette are taken from the work of Antonio Grass, a Colombian artist dedicated to the investigation and recuperation of diverse examples of pre-Columbian art.

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