The Inter-American System and Its Evolution
Claudio M. Grossman
THE INTER-AMERICAN SYSTEM
AND ITS EVOLUTION

Claudio Grossman*

1. INTRODUCTION

The American Declaration on the Rights and Duties of Man (hereinafter: American Declaration) and the American Convention on Human Rights (hereinafter: American Convention), are the two most important instruments of the Inter-American system for the protection and promotion of human rights. Supervision of compliance is carried out by the Inter-American Commission on Human Rights (hereinafter: the Commission) and the Inter-American Court of Human Rights (hereinafter: the Court). The Commission fulfills its functions primarily through country reports analyzing the overall human rights situation in a country and through decisions on individual petitions presented by individuals who complain that their internationally-protected rights have been violated. Individuals have standing to file petitions only with the Commission, and not the Court. Only the former body (or the affected state) may decide to bring cases to the Court, where the State has accepted the Court's compulsory jurisdiction, and if the State fails to comply within three months with the Commission's recommendations in the underlying case. The main function of the

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1 This piece draws extensively from the author's article on "The Inter-American System of Human Rights: Challenges for the Future", as published in 84 Indiana Law Journal (2008-4).


3 22 November 1969, 1144 UNTS 143 (hereinafter: American Convention).


6 For a description of the Inter-American system, see C. Grossman, "The Velásquez Rodríguez Case: The Development of the Inter-American Human Rights System", in J.E. Noyes, L.A. Dickinson and M.W. Janis (eds), International Law Stories (New York, Foundation Press 2007), p. 81-84. The petition system has not always been the favored or the most efficient means to address human rights...
Court is to issue decisions on the petitions before it. In addition, the Court has the ability to render Advisory Opinions interpreting human rights treaties applicable in the Western Hemisphere. The political organs of the Organization of American States (hereinafter: OAS), i.e. the Permanent Council and the General Assembly, are responsible for guaranteeing compliance with the American Declaration and Convention, as well as with the decisions of the Commission and the Court.7

The stages of development of the Inter-American system can be categorized into three main phases which nevertheless intersect and overlap. The first phase spans from the inception of the Inter-American court until roughly the 1980s, when the system dealt with dictatorial regimes characterized by mass and gross violations of human rights. The first three decisions of the Inter-American Court’s contested cases all dealing with forced disappearances in Honduras characterize the way in which these violations were confronted.8 During the second phase, the Americas experienced a generalized rise of democracy that required rejection of the legacies of dictatorial regimes. The Commission and the Court were confronted with issues such as impunity, freedom of expression, and due process. During this phase the supervisory organs further developed the scope of States' obligations under Articles 1(1) and (2) of the American Convention, especially concerning the duties to investigate and punish those allegedly responsible for human rights violations, and the need to conform States' domestic legislation to the objectives laid down by the American Convention. On 11 September 2001, in Lima, Peru, the OAS General Assembly at the XXVIII Special Session, recognized the hemisphere’s new political reality and adopted the Inter-American Democratic Charter. The Charter explicitly establishes democracy as a right, of which respect for fundamental human rights is an indispensable element and allows the organization to adopt sanctions against delinquent states.

Currently, the system is in its third phase, where issues of inequality and exclusion, such as poverty, threaten to undermine the expansion of democratic values experienced during the second phase. The Western Hemisphere currently has the least equitable distribution of wealth in the world. Vulnerable groups, such as indigenous people, women, minorities, and children, do not fully enjoy human rights.

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As these phases have developed, the Commission and Court's case law has been significant in advancing the protection of fundamental rights. This article describes and analyzes three cases that illustrate the development of the Inter-American system's phases, describes how that system has confronted gross and systematic human rights violations, and evaluates the future of the Inter-American system, making proposals for its further development. The included cases are: Velásquez Rodríguez v. Honduras (1988), which concerns mass and gross violations of human rights involving forced disappearances in the context of authoritarianism and dictatorships; Barrios Altos v. Peru (2001), which addresses the legacy of dictatorships, particularly with regard to impunity; and Mayagna (Sumo) Awas Tingni Community v. Nicaragua (2001), which examines the rights of indigenous peoples, the status of vulnerable groups and the need to expand and strengthen democracy through the inclusion of such groups.

2. THE CASE OF ANGEL MANFREDO VELÁSQUEZ RODRÍGUEZ

The case of Angel Manfredo Velasquez addresses a forced disappearance, in which the state both denied involvement and refused to investigate or try the case.Disappearances are particularly egregious violations of human rights because they are perpetrated by State authorities who later deny any knowledge or involvement. In the 1970s and 1980s in Latin America, disappearances were a grim political and legal reality for many including Manfredo Velásquez and his family.

Angel Manfredo Velasquez Rodriguez disappeared on September 12, 1981, in downtown Tegucigalpa, Honduras. His friends and family never saw him again. The Honduran government denied any knowledge or involvement in his disappearance, and the Honduran courts refused to hear the family's case.

The petition in Velásquez Rodriguez was filed with the Commission in October 1981, and alleged that the Honduran government was responsible for Manfredo Velasquez's disappearance. As was common in disappearance cases, the government of Honduras failed to provide the Commission with evidence and information about...
the disappearance, and as a result, the Commission was forced to presume the validity of the facts as alleged by the petitioner, as required at that time by Article 42 of the Commission's Rules of Procedure. The Commission's report indicated that Manfredo Velásquez had been detained and most likely disappeared because of state agents in Honduras. For the first time in a disappearance case, the Court held that the crime of disappearance violated specific articles of the American Convention, particularly the right to life (Article 4) and the right to personal liberty (Article 7). The Commission recommended investigation and punishment of those guilty as well as reparations.

In 1985, after General Alvarez, the military strongman of Honduras, was ousted from power, the new government of Honduras requested additional time to conduct an internal investigation. However, the investigation concluded with a four-sentence report stating that there was no evidence connecting anyone in the military to the disappearance. Consequently, in April 1986, the Commission affirmed its earlier recommendation in its entirety and referred the case to Court.

2.1. THE DECISION

While the American Convention does not explicitly “criminalize” disappearances, the Court ruled that the practice of forced disappearances does constitute multiple and continuous violations of the rights protected in four articles of the Convention, specifically Articles 1 (duty to guarantee the included rights without discrimination), 4 (right to life), 5 (right to personal integrity), and 7 (right to personal liberty). “The

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14 Ibid., paras. 4–6 (indicating that the Commission did not receive the requested information from the Honduran government despite requests sent on 14 October 1981, 24 November 1981, 6 October 1982, 23 March 1983 and 9 August 1983).
15 Ibid., Article 39.
16 See IACommHR, 2001 Rules of Procedure (hereinafter: Commission's Rules of Procedure) (approved by the Commission in 2000, and amended in 2002 and 2003) ("The facts alleged in the petition, the pertinent parts of which have been transmitted to the State in question, shall be presumed to be true if the State has not provided responsive information during the maximum period set by the Commission under the provisions of Article 38 of these Rules of Procedure, as long as other evidence does not lead to a different conclusion").
18 Ibid., para. 16 (relating that Honduras requested postponement of consideration of the case in its Cablegram of 1 March 1985 and that it stated that it had set up an Investigating Commission to examine the complaints and identify and punish those responsible).
20 See Article 50 Regulations IACommHR, OEA/Ser.L.V/II.82 doc.6 rev. para. 1 (1992); Article 63(1) American Convention, supra n. 3.
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Kidnapping of a person is an arbitrary deprivation of liberty, an infringement of a detainee’s right to be taken without delay before a judge and to invoke the appropriate procedures to review the legality of the arrest, all in violation of Article 7 of the Convention which recognizes the right to personal liberty.”

The Court interpreted Article 5’s provisions regarding cruel, inhuman and degrading treatment as prohibiting incommunicado detention. It also found that prolonged and isolated imprisonment harms the “psychological and moral integrity of the person.” Finally, the Court acknowledged that disappearances involving clandestine executions without trials and clandestine burials violated the right to life under Article 4. The Court agreed that disappearances represented violations beyond that of the express articles of the Convention, by characterizing disappearances as a violation of the human rights implicitly protected by the values of the system. It stated that “[t]he practice of disappearances […] shows a crass abandonment of the values which emanate from the concept of human dignity and of the most basic principals of the Inter-American system and the Convention.”

The Velásquez Rodríguez decision was the first case decided by an international tribunal to declare the practice of forced disappearances illegal. By exposing the State’s responsibility for this practice and rejecting a status quo characterized by repression and authoritarianism, the case helped further the goals of human rights and democracy in the region. The case challenged the pervasive culture of impunity and deniability in countries in the region and required State governments to respond to such allegations beyond mere denials of involvement. In the context of other domestic and international factors present during this early phase, such as the end of the Cold War and the easing of tensions in the region, the Velásquez Rodríguez decision contributed to the end of the systemic state practice of disappearances, and enhanced human rights protections in the hemisphere.

2.2. THE IMPORTANCE OF THE VELÁSQUEZ RODRÍGUEZ CASE FOR THE INTERNATIONAL COMMUNITY AND COURT

The Velásquez Rodríguez decision was unique in that it explicitly defined disappearances, establishing clearly that this horrendous crime violated the American Convention, while exposing the criminal behavioral of dictatorial regimes. Prior to this decision, the issue was addressed by the United Nations General Assembly which

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22 Ibid., para. 155.
23 Ibid., para. 156 (stating that “prolonged isolation and deprivation of communication are in themselves cruel and inhumane treatment, harmful to the psychological and moral integrity of the person”).
24 Ibid.; Article 5 American Convention, supra n. 3.
26 Ibid., para. 158.
27 Ibid., paras. 151–153.
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adopted resolutions condemning forced disappearances, and the United Nations Commission on Human Rights created the Working Group on Enforced and Involuntary Disappearances which assisted families in determining the fate of their relatives and establishing channels of communication between the families and the governments.28 The Inter-American Commission itself had previously condemned the practice and urged that it be investigated and stopped.29 The OAS General Assembly characterized the crime of disappearances as "an affront to the consciousness of the hemisphere" and a crime against humanity.30 While most human rights instruments recognized disappearances as a crime, disappearances had not been the object of an international judicial decision determining that they led to specific, actionable violations.

The Velásquez Rodríguez decision has now been codified both by regional and international bodies, making forced disappearances an international crime. Influenced by the Velásquez Rodríguez decision, the Inter-American Convention on the Forced Disappearance of Persons was passed in 1994 and entered into force in 1996.31 The Convention incorporates the definition of disappearances used in the case, a definition that encompasses kidnapping, torture, and murder.32 At the universal level, exposure of this inhumane practice led to the inclusion of the crime of disappearances in the Rome Statute of the International Criminal Court (ICC)33 and the International Convention against Disappearances.34 The Rome Statute defines forced disappearances as a crime against humanity (a grave violation of human rights and fundamental liberties) that is subject to the jurisdiction of the International Criminal Court.35 These developments at the regional and international level have confirmed that forced

31 Current signatories to the Convention are the following: Argentina, Bolivia, Brazil, Chile, Colombia, Costa Rica, Ecuador, Guatemala, Honduras, Mexico, Nicaragua, Panama, Paraguay, Peru, Uruguay, and Venezuela.
35 See Article 7(2)(i) Rome Statute of the International Criminal Court, 17 July 1998, 2187 UNTS 90. The crime is defined as "the arrest, detention or abduction of persons by, or with the authorization, support or acquiescence of, a State or a political organization, followed by a refusal to acknowledge that deprivation of freedom or to give information on the fate or whereabouts of those persons, with the intention of removing them from the protection of the law for a prolonged period of time." Ibid.
disappearances are an international crime, further strengthening a normative framework that condemns and punishes this type of inhumane behavior.

The impact of Velásquez Rodríguez as the first contentious case decided by the Court also contributed to clarifying important matters not explicitly decided by the Convention, including the nature of the Court's proceedings, the level and kind of proof required to prove such human rights violations, the responsibilities of the petitioners and the nature of State responsibility or reparations.

Despite the prior proceedings at the Commission, the Court in this case established itself as a court of first instance, practically trying the case de novo. This may now seem procedurally awkward since everything had to be proven anew, thereby undermining the need for State cooperation in the underlying Commission proceedings. The Honduran government in this case had not fully cooperated with the Commission's proceedings, leading that organ to determine Honduras's responsibility on a procedural presumption which accepted the validity of uncontested facts alleged in the petition. The Commission and the lawyers of the victims decided to retry the case before the Court, unequivocally establishing the government's responsibility for the disappearances in open and contested judicial proceedings. This approach contributed to exposing the crimes of disappearances to the public opinion, while avoiding a challenge to the Court's decision (on an argument of lack of due process) by the Honduran state.

In addition, in reviewing the case, the Court in Velásquez Rodríguez faced two relevant issues that would have significant importance throughout its development. First, the Court decided that victims must first pursue all domestic remedies that could potentially and realistically achieve the goal sought before bringing their cases to an international tribunal. In defining the exhaustion of local remedies, the Velásquez Rodríguez Court also set forth the criteria for the interpretation of "effective remedies," pursuant to Article 25 of the American Convention regarding the right of access to justice.

Second, the Court defined the standard of proof required in disappearance cases. As the lack of forensic evidence makes it difficult to prove disappearances, the Court held that, in some instances, disappearances could be proven only by circumstantial

36 See IACtHR (Judgment) 26 June 1987 (Judgments), Velásquez Rodríguez v. Honduras, Preliminary Objections, para. 29 (stating, "[i]n exercising these powers, the Court is not bound by what the Commission may have previously decided; rather its authority to render judgment is in no way restricted. The Court does not act as a court of review, of appeal or other similar court in its dealings with the Commission").

37 See Court's Rules of Procedure, supra n. 16, Article 42.

38 See IACtHR (Judgment) 29 July 1988, Velásquez Rodríguez v. Honduras, para. 59; IACtHR (Judgment) 26 June 1987 (Judgments), Velásquez Rodríguez v. Honduras, Preliminary Objections, para. 88.

evidence and logical inference. Before it would allow circumstantial evidence, however, the Court required the Commission to establish, by satisfying a high standard of proof, that there was a pattern of disappearances. If a pattern of disappearances was proven, circumstantial evidence was enough to link an individual case to such pattern. Then, the burden of proof would shift to the State to demonstrate that it was not responsible for the disappearance.

Had the Court not accepted circumstantial evidence in the Velásquez Rodríguez case, it would have been impossible to prove State responsibility since higher evidentiary standards (e.g. beyond a reasonable doubt) – adopted to protect individuals rights require the State, the judges and the police to actively seek the truth, in contrast to the Velásquez Rodríguez case, where those entities were actually responsible for the disappearances. In recognition of this situation, the Court’s judgment reflected the need for different evidentiary standards in international human rights tribunals as its purpose is to determine State responsibility rather than individual guilt.

Furthermore, the Court in Velásquez Rodríguez, for the first time in the Inter-American system, ordered material and non-material damages based on international law rather than Honduran domestic law. In a subsequent interpretation of its decision on reparations, the Court protected the victims against devaluation of the Honduran currency by ordering the payment of reparations in U.S. dollars.

While the Commission and the victim’s lawyers also sought symbolic forms of redress, the Court rejected their claim, perhaps for political concerns regarding a possible reaction by the State of Honduras in the first case from a human rights system still in development. In numerous cases since Velásquez Rodríguez, however, the Court has ordered States to make reparations that have symbolic significance, such as building monuments, publishing the Court’s decision in a newspaper, or providing

40 See IACtHR (Judgment) 29 July 1988, Velásquez Rodríguez v. Honduras, paras. 124–126.
41 Ibid.
42 The Court allows circumstantial evidence in disappearances cases because “this type of repression is characterized by an attempt to suppress all information about the kidnapping or the whereabouts and fate of the victim.” Ibid., para. 131.
43 Ibid., paras. 129–134.
44 See Mendez and Vivanco, supra n. 28, p. 568. In contrast, the European Court of Human Rights regularly looks to domestic law for issues of reparations under Article 41 of the European Convention on Human Rights. Notably, the Inter-American Court does have flexibility to refer the case to domestic procedures for reparations due to the nature of the issue before it such as the complex economic issues it faced in the Five Pensioners v. Peru. See IACtHR (Judgment) 28 February 2003, Five Pensioners v. Peru, para. 178. See also S. García Ramírez, La jurisdicción interamericana de derechos humanos (Mexico DF, Comisión de Derechos Humanos del Distrito Federal 2006), p. 188, 203.
the resources for a proper burial.\textsuperscript{46} The Court has also required that States make reparations to a particular community to which the victim belongs(ed) by providing services that are otherwise lacking, so as to prevent future violations.\textsuperscript{47}

In summary, the \textit{Velázquez Rodríguez} case became an important landmark in the developing of human rights law, exposing and delegitimizing the inhumane practice of disappearances, while showing the value of international law when the victim could not obtain justice in the domestic realm. Further building on its decision, the Court has since noted that family members of the disappeared are often themselves direct victims of cruel, inhuman, and degrading treatment because they have been denied access to justice and have lived with the uncertainty of not knowing the whereabouts of their loved ones.\textsuperscript{48} By framing the issue in terms of human rights abuses and not politics, the case reinforced the position that human rights apply regardless of the political context or the regime in power. By following a judicial process based on a treaty, and issuing an impartial decision grounded in the rule of law, the Court circumvented sovereignty concerns and the politics that generally accompanied human rights discussions in the hemisphere.

3. \textbf{THE CASE OF BARRIOS ALTOS V. PERU}

The case of \textit{Barrios Altos} concerns amnesty laws enacted by the Peruvian government in order to prevent the investigation of extrajudicial killings resulting from Peru's fight against terrorism. The laws created a legal barrier to individuals who sought to stop the crimes and prevented the protection of human rights violations.

\textsuperscript{46} See IACtHR (Judgment) 26 May 2001, \textit{The "Street Children" (Villagráñ-Mora\'les) v. Guatemala}, paras. 6, 7 (requiring that Guatemala provide the resources for a proper burial for one of the victims, and designate an educational center with a plaque dedicated to the victims); IACtHR (Judgment) 14 March 2001, \textit{Barrios Altos v. Peru} (ordering the State to provide the beneficiaries with educational benefits including scholarships, classroom materials, and uniforms, and to erect a monument commemorating the victims within 60 days of the signing of an agreement between the Commission and the State).

\textsuperscript{47} See IACtHR (Judgment) 20 June 2005, \textit{Fermin Ramirez v. Guatemala}, para. 138(12) (ordering Guatemala to improve detention conditions to conform with international standards); IACtHR (Judgment) 17 June 2005, \textit{Yakye Axa Indigenous Community v. Paraguay}, para. 221 (requiring the State to provide clean water and medical care for an indigenous community while the community is without their own land); IACtHR (Judgment) 10 September 1993, \textit{Aloebeetoe v. Suriname}, para. 116(5) (ordering the opening of a school and pharmacy for the community as part of the reparations). See also Center for Justice and International Law, "Las reparaciones en el Sistema Interamericano de Protección de los Derechos Humanos", 22 \textit{CEJIL Gaceta} (2004), <http://cejil.org/sites/default/files/Gaceta_22_sp.pdf>.

On 3 November 1991, six armed members of the military entered a building in the Barrios Altos neighborhood in Lima, Peru, while the victims were having a fundraising party. The armed group ordered everyone to drop to the floor and opened fire, indiscriminately killing fifteen people and injuring another four.\(^{49}\) The incident was linked to the “Grupo Colina,” a division within the Peruvian army that acted as a death squad in the fight against terrorism. Information subsequently gathered from different sources suggested that, prior to this incident, there were a series of terrorist attacks attributed to Sendero Luminoso (the Shining Path) that could have triggered the military attack. The validity of these claims, however, was never proven before the Inter-American Court.

The first judicial investigation into the incident did not occur until 1995, four years after the event. This investigation was suspended after the Peruvian Congress passed the first amnesty law, which “exonerated members of the army, police forces and also civilians who had violated human rights or taken part in such violations from 1980 to 1995 from responsibility.”\(^{50}\)

After several attacks on the constitutionality of the amnesty laws, leaving the future of these laws uncertain, the Peruvian Congress passed law No. 26492, “directed at interfering with legal action in the Barrios Altos case,” which provided protection to the amnesty laws, adding that it could not be reviewed by any judicial authority. Consequently, judicial actions challenging the constitutionality of the amnesty laws in question were abandoned and any pending investigations were closed.

The case was brought before the Inter-American system in 1995. Peru’s first response to the case was to defend the amnesty laws, claiming that they were exceptional measures adopted based on the urgent need to fight terrorism in the country. The Commission rejected this argument, and on 8 June 2000, the Commission filed a petition with the Court in light of Peru’s refusal to investigate the claims and compensate the victims.

### 3.1. THE DECISION

In the proceedings before the Court, the Peruvian government unsuccessfully attempted to withdraw its recognition of the Court’s contentious jurisdiction, but eventually acknowledged its international responsibility in the case for the violations of Articles 4 (right to life), 5 (right to personal integrity), 8 (right to due process), and 25 (access to justice) of the American Convention. The Court additionally declared that Articles 1 and 2 of the Convention had been violated. While the Peruvian Congress had attempted to exclude amnesty laws from judicial scrutiny, the Court held that amnesty laws were contrary to the Convention, stating that “[t]his Court considers that all amnesty provisions, provisions on prescription and establishment of

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\(^{49}\) See IACtHR (Judgment) 14 March 2001, *Barrios Altos v. Peru*, para. 2(b).

\(^{50}\) Ibid., para. 2(i).
measures designed to eliminate responsibility are inadmissible, because they are intended to prevent the investigation and punishment of those responsible for serious human rights violations such as torture, extrajudicial, summary or arbitrary executions and forced disappearances, all of them prohibited because they violate non-derogable rights recognized by international human rights law."\textsuperscript{51} Furthermore, the Court declared that "self amnesty laws lead to the defenselessness of victims and perpetuate impunity; therefore, they are manifestly incompatible with the aims and spirit of the Convention."\textsuperscript{52}

3.2. THE IMPORTANCE OF THE CASE FOR THE COURT AND THE INTERNATIONAL COMMUNITY

The Inter-American Court’s rejection of amnesty laws as “manifestly inconsistent” with the Convention has had significant effects in the region, especially in the Chilean and Argentinean contexts. The case lead Argentina’s Supreme Court to declare amnesty and pardon laws unconstitutional. Likewise, in Chile, the courts adopted the theory of “the continuing crime” (“delito continuado”) to prevent the application of amnesty laws in violation of the Inter-American human rights norms.

In rejecting amnesty laws, the Court explicitly reinforced the duty to investigate and punish human rights violations, as stated in Article 1(1) of the American Convention. The Court’s decision indicated that the individuals need to live in a system that secures and guarantees protection of their internationally-protected rights, not protection of those who violate those rights. By rejecting impunity, the Court contributed to strengthening the rule of law, confirming that the law would not be used as a shield to prevent the investigation of crimes.

4. THE CASE OF AWAS TINGNI V. NICARAGUA

The Awas Tingni, an indigenous community of approximately 630 individuals, has inhabited the Atlantic Coast of Nicaragua for generations. To protect the land, the tribe sought in vain its demarcation.

The concerns of the community regarding land titling and demarcation intensified when the government of Nicaragua granted Maderas y Derivados de Nicaragua S.A. (MADENSA) permission to enter the Awas Tingni’s lands and make an inventory of the tropical forest resources in preparation for large-scale logging. In December 1993, a concession for logging on approximately 43,000 hectares of land was finalized. At the time, the World Wildlife Fund and the University of Iowa College of Law assisted the Awas Tingni community in negotiations with the government and MADENSA.

\textsuperscript{51} Ibid., para. 41.
\textsuperscript{52} Ibid., para. 43.
As a result, an agreement was signed in May 1994, providing for economic benefits for the community. Additionally, the government committed itself to start the process of identifying, demarcating and titling the lands.

Despite these assurances, the government was actively engaged in discussions with Sol del Caribe (SOLCARSA), another logging company from South Korea, in a similar project that would further deplete the land’s resources. When SOLCARSA won the concession to log Awas Tingni land, the community took legal action, both domestically and internationally.

After several attempts, the community managed to get SOLCARSA’s concession revoked in domestic courts. However, the titling and demarcation of the community lands were still pending. Facing the lack of government cooperation in this regard, the Commission brought the case to the Inter-American Court. The petition requested that the Court order Nicaragua to establish and implement a procedure that would result in the prompt demarcation and specific recognition of Awas Tingni’s communal lands, and provide monetary compensation to the Awas Tingni for the infringement of their property rights.

4.1. THE DECISION

The Court’s proceedings illustrated the fundamental difference between the government’s and the indigenous people’s views regarding the ownership of land and resources. While the Nicaraguan government advanced the traditional paradigm of state “dominance over territory, a perspective in which is absent a desire to understand accurately and fully the dimensions and significance of the indigenous presence,” the Awas Tingni stressed communal ownership of the land based on their traditional fishing and hunting use since time immemorial.

The Court ultimately accepted the Awas Tingni’s claim, ruling that the community was entitled to the recognition of property rights over their lands. These rights had been expressly recognized in Nicaragua’s constitution and legislation, but not implemented. The Court also held that there were no adequate and effective remedies for indigenous peoples to claim such rights in the domestic arena. Failure to implement the rights expressly granted by a State’s domestic legal order constituted a violation to the American Convention.

Additionally, the Court found a violation of the right to property set forth in Article 21 of the Convention. In its analysis of Article 21, the Court further found, inter alia, that: 1) there is a right to communal property; and 2) indigenous peoples are entitled to their traditional lands based on their use (e.g. fishing and hunting) since time immemorial. For the Court, a narrower conception of rights in domestic law did

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not trump broader treaty obligation. According to the Court, "[t]hrough an evolutionary interpretation of international instruments for the protection of human rights, taking into account applicable norms of interpretation and pursuant to article 29(b) of the Convention -which precludes a restrictive interpretation of rights-, it is the opinion of this Court that article 21 of the Convention protects the right to property in a sense which includes, among others, the rights of members of the indigenous communities within the framework of communal property, which is also recognized by the Constitution of Nicaragua."55

4.2. THE IMPORTANCE OF THE CASE FOR THE COURT AND THE INTERNATIONAL COMMUNITY

The Court's decision in the case of the Awas Tingni community was the first international decision to recognize the right to communal property, and to recognize indigenous law and custom as a source of enforceable rights and obligations. The Court stressed that "the close ties of indigenous people with the land must be recognized and understood as the fundamental basis of their cultures, their spiritual life, their integrity, and their economic survival."56 It concluded that "[a] result of customary practices, possession of the land should suffice for indigenous communities lacking real title to property of the land to obtain official recognition of that property, and for consequent registration."57 The Court in this case reiterated the right of indigenous peoples to live freely within their territory, and acknowledged their legal, cultural, and social differences, respecting and embracing them.

The case of Awas Tingni has allowed the Court – applying the American Convention – to continue to recognize and protect the special character of indigenous populations and their collective rights. The importance of indigenous populations, their social exclusion in numerous countries – including the relatively high percentages of illiteracy and poverty in comparison to the rest of society – has led to the Commission's creation of a Special Rapporteur on the Rights of Indigenous Peoples. The purpose of that position is to promote the recognition of the rights of indigenous groups by setting standards and initiating cases before the Inter-American organs.58

54 IACtHR (Judgment), 31 August 2001, Mayagna (Sumo) Awas Tingni v. Nicaragua.
55 Ibid., para. 148.
56 Ibid., para. 149.
57 Ibid., para. 151.
5. REFLECTIONS ON THE FUTURE OF THE INTER-AMERICAN SYSTEM

Since the Velásquez Rodríguez decision eighteen years ago, drastic political changes have taken place in the Americas. The Inter-American system has both contributed to these changes and has been shaped by them. By protecting human rights and democratic values, the system has offered a voice to victims, and at the same time has upheld the legitimacy of human rights norms. The Inter-American Commission and Court aided in this process by actively saving lives, authoritatively reporting violations, and administering justice when domestic remedies failed to bring relief to the victims. The individual petition mechanism serves as an early warning system since, when new violations begin to emerge, they are brought to the attention of the political organs of the OAS as well as the public.

Currently, 34 of the 35 countries in the Western Hemisphere have elected governments. Societies in the hemisphere are more open, with greater civil society participation than in previous decades. Nonetheless, serious problems remain: in numerous cases, judiciaries are not perceived as fair, congresses do not perform their “checks and balances” role when confronted with powerful executives, and poverty and exclusion conspire against democracy and participation.

Argentine social scientist Guillermo O’Donnell discusses the phenomenon of “delegative democracies,” whereby a charismatic figure assumes the presidency after relatively free elections and then governs without the traditional counterweights normally associated with a representative democracy.59 Inherent in such “delegative democracies” is a risk of backsliding into authoritarianism. “Charismatic leaders” concentrate powers and adapt the constitutional legal system to perpetuate their “leadership.”

To confront this situation, it is crucial to strengthen democracy by improving institutions of democratic governance, encouraging civil society participation, and emphasizing the value of democratic ideas. The Inter-American system of human rights has made valuable contributions to promoting and, in several instances, protecting basic human rights, thereby strengthening the processes for a democratic transformation of the region. In fact, it is widely perceived as the most successful and participatory endeavor of an otherwise weak organization.60 The dramatic increase in decisions adopted by the Inter-American human rights organs attests to the growing relevance of the system. For example, the Commission received 571 petitions in 1998,

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while in 2005 it received 1,330.\textsuperscript{61} That same year, the Commission opened 150 new cases, and had 1,137 cases and petitions pending.\textsuperscript{62}

Between the 1986 and 2005, the number of contentious cases before the Court had risen from 3 to 74.\textsuperscript{63} In 1987, the Court issued one judgment and no pronouncements on preliminary objections, merits or reparations. In 2005, the Court issued judgments in 14 cases and pronouncements on preliminary objections, merits or reparations in 29 cases.\textsuperscript{64} The number of provisional measures ordered by the Court has likewise dramatically increased.\textsuperscript{65} In 1980, the Court held 38 days of sessions; by 2005 that number had almost doubled. That year, the Court held 69 days of sessions, divided between four regular and one special session.\textsuperscript{66} In 27.9\% of the cases, States have acknowledged their international responsibility, either completely or in part.\textsuperscript{67} During the 1980s, the average case before the Court lasted 39 months; since the adoption of new Rules of Procedure in 2000, processing time for cases has been reduced to an average of 21 months.\textsuperscript{68}

However, the system has much to achieve before developing its full potential in the region. Some issues to be addressed concern much needed procedural improvements and, in many instances, the required changes can be achieved by the supervisory organs themselves. For example, by defining the Court as a “trial court” under Velásquez Rodríguez, every case was required to be proven twice: once before the Commission, and then again before the Court. As a result, the expenses of the proceedings increased, because witnesses had to be brought before both tribunals. Moreover, the processes became less accurate as time elapsed and witnesses could not

\textsuperscript{62} Ibid., para. 8(2).
\textsuperscript{63} Ibid., para. 8(6).
\textsuperscript{64} Ibid., para. 66.
\textsuperscript{65} Ibid., paras. 76–77. In 1988, the Court ordered the State to adopt provisional measures in three cases. In 2004 provisional measures were ordered in 34 cases, and in 36 cases in 2005. Provisional measures may include providing cell phones and bodyguards to protect the lives and personal integrity of individuals receiving death threats. Ibid.
\textsuperscript{66} Ibid., p. 59. Recently, the Court has held special sessions in other countries, such as Brazil, Argentina, and El Salvador.
\textsuperscript{67} Ibid., p. 63 (listing the cases that have accepted responsibility); see, e.g. IACtHR (Judgment), 15 September 2005, Mapiripan Massacre v. Colombia; IACtHR (Judgment) 12 September 2005, Gutiérrez Soler v. Colombia; IACtHR (Judgment) 3 March 2005, Huitica Tese v. Peru; IACtHR (Judgment) 29 April 2004, Plan de Sánchez Massacre v. Guatemala; IACtHR (Judgment) 27 November 2003, Maritza Urrutia v. Guatemala; IACtHR (Judgment) 25 November 2003, Myrna Mack Chang v. Guatemala; IACtHR (Judgment) 18 September 2003, Bulacio v. Argentina; IACtHR (Judgment) 14 March 2001, Barrios Allos v. Peru; IACtHR (Judgment) 4 December 1991, Aloeboetoe v. Suriname.
always clearly remember underlying events. Additionally, requiring that these cases be tried twice greatly weakened the Commission's role by sending the message that the member states need not cooperate with the proceedings before the Commission.

The Court has begun to address these concerns by adopting new Rules of Procedure in November 2000, whereby the Court, while retaining its right to "retry" a case, may give probative value to the Commission's proceedings if, in the Court's judgment, those proceedings satisfy the necessary standards. Still, the issue has yet to be fully resolved to avoid duplication of efforts and achieve procedural economy that would, in turn, further shorten the trial and decision periods.

A cost barrier also exists given the increasingly high litigation expenses in Washington D.C. and Costa Rica, where the system's main supervisory organs sit. Additionally, the Commission does not have a transparent system to grant hearings, admit cases for processing or follow up on initiated petitions. 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.

The legitimacy of the system has brought about a significant increase in the number of cases filed annually, as mentioned above. Because of these procedural inefficiencies, there is a delay in the resolution of cases which must be promptly addressed. Notwithstanding the importance of the Court's docket issues and internal governance issues, the crucial obstacle impairing the system is the lack of material and political resources accorded to it. The Commissioners and Court judges are not full-time employees and thus each body only meets a few times per year for a few weeks each time. To deal with a population of 800 million individuals in the hemisphere, the Commission has only 24 full-time lawyers and the Court nine. The OAS has failed to allocate sufficient resources to the Commission and the Court, demonstrative of a dearth of political will.

The OAS General Assembly has been reluctant to exercise its role as political guarantor of the system. With the adoption of the Democratic Charter in 2001, the organization acquired additional tools to enforce human rights protections and ensure compliance with Inter-American decisions. The member states, by adopting the Charter, reaffirmed their will to continue to protect and strengthen human rights and promote democratic values. This is explicitly reflected in sections IV and V of the Charter which encompass Article 20, reading, in part: "In the event of an unconstitutional alteration of the constitutional regime that seriously impairs the democratic order in a member state, any member state or the Secretary General may

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request the immediate convocation of the Permanent Council to undertake a collective assessment of the situation and to take such decisions as it deems appropriate.\textsuperscript{70}

Although violations of human rights create a basis for action by the political organs of the OAS, they have not yet fully exercised this possibility. Is it a lack of democratic solidarity? Is it easier to confront dictatorships than the shortcomings of democracy? Is it the fact that while all of the countries in the Western Hemisphere belong to the Inter-American system, not all of them have ratified the American Convention, most notably, Canada and the United States? Regardless of what the reason may be, without the system being accorded the material and political support that it needs, it will not be able to realize its full potential.

6. CONCLUSION

The Inter-American system has demonstrated its ability to promote and strengthen the values of human rights and democracy and has contributed significantly to their development in the region. The cases of Velásquez Rodríguez, Barrios Altos and Awas Tingni illustrate the impact the system has been able to have, especially by confronting mass and gross violations of human rights under dictatorships, by addressing their legacy and, most recently, by seeking to strengthen fledgling democracies by promoting inclusion and rejecting a backslide to authoritarianism.

The system is now facing new challenges of inclusion and poverty, economic, social and cultural rights, and new challenges to democracy in the region. To aptly meet these challenges, the system must be strengthened with the allocation of sufficient resources demonstrative of a collective political will to act in cases of human rights violations. To achieve those goals today, as in the past, the power of the hemispheric common narrative of human rights as embodied in the Inter-American system is essential.

\textsuperscript{70} Inter-American Democratic Charter, 11 September 2001, OAS Doc. OEA/SerP/AG/Res.1.