Disappearances in Honduras The Need for Direct Victim Representation in Human Rights Litigation

Claudio M. Grossman
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By Claudio Grossman*

I. INTRODUCTION

Honduran national Manfredo Angel Velásquez Rodríguez was taken to a detention center in Tegucigalpa on September 12, 1981, and was never seen again. He was thirty-five years old when he disappeared, and left a wife and four small children. Without any judicial process he was detained, interrogated and tortured, and then disappeared. A petition concerning the disappearance of Velásquez Rodríguez was filed with the Inter-American Commission on Human Rights (Commission) in October of 1981. On July 29, 1988, an historic day in the fight against governmental human rights abuses in Latin America, the Inter-American Court of Human Rights held that the Government of Honduras was responsible for the disappearance of Manfredo Angel Velásquez Rodríguez. In this decision, the Court exercised for the first time its compulsory jurisdiction in a contested case and became the first interna-

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tional tribunal to find a State responsible for disappearances. Although the Court is empowered with compulsory jurisdiction under Article 62 of its Convention, prior to this case the Court had only once exercised its compulsory jurisdiction, and then in an uncontested case. The State concerned, Costa Rica, submitted the case against itself, and agreed to be bound by the ruling, but the case was dismissed before a final ruling was reached. Although other OAS member states were accused of resorting to disappearances of political dissidents, Honduras, which had acceded to the Court's binding jurisdiction, was the first state subjected to liability.

"Disappearance" is a tragic governmental practice developed in the early 1970s by certain Latin American governments which exterminate political dissidents, cover up all evidence of the murder and deny all knowledge of the victims' whereabouts. "[A] 'disappearance' has occurred whenever there are reasonable grounds to believe that a person has been taken into custody by authorities or with their connivance and the authorities deny that the victim is in custody." In Latin America the term often means: "Seizure of individuals by military, paramilitary or police agents of the state, who secretly murder and dispose of the bodies of their victims, often after torture, always without legal process, and without acknowledgement or admitted responsibility of the state."

3. Velásquez Rodríguez Case, supra note 2, para. 194, 28 I.L.M. at 329 (reporting unanimous finding of guilt). Any state member of the Organization of American States (OAS) and authorized OAS bodies may request an advisory opinion from the Court. American Convention, supra note 2, art. 64. Only states which have accepted the Court's binding jurisdiction by express declaration may be parties to the exercise of that jurisdiction. Id. art. 62.


5. See Linda Drucker, Recent Development, Governmental Liability for "Disappearances": A Landmark Ruling by the Inter-American Court of Human Rights, 25 STAN. J. INT'L L. 289, 296 (1989) (noting substantive evidence in case coupled with Honduran accession to compulsory jurisdiction as determining Honduras as first state party to Court's first contentious case). See also Jill Smolowe, Murderers Most Foul, TIME, Feb. 1, 1988, at 28 (noting likewise that history of case plus acceptance of jurisdiction made it possible to bring case).


7. Id. (quoting AMNESTY INTERNATIONAL, POLITICAL KILLINGS BY GOVERNMENTS 14 (1983)).

8. Id. (citing E. HERMAN, THE REAL TERROR NETWORK: TERRORISM IN FACT AND PROPAGANDA 7 (1982)). See also Drucker, supra note 5, at 290 n.9 (noting use of term arising from Spanish "desaparecidos," or "disappeared ones," to which attached the connotation of kidnapping, torture, and execution of activists.

For additional sources concerning the practice of disappearances, see Nigel S. Rodley, The International Legal Consequences of Torture, Extra-Legal Execution, and Disappearances, in NEW DIRECTIONS IN HUMAN RIGHTS (Ellen L. Lutz et al. eds., 1989) (citing works including: J. EGELAND, HUMANITARIAN INITIATIVE AGAINST POLITICAL DISAPPEARANCES
At approximately the same time that the Commission started investigating the disappearance of Velásquez Rodríguez, the Commission also opened the case of another Honduran national: José Saúl Godínez Cruz. Godínez Cruz was also married and had a child when he was captured on July 22, 1982 by a group of men. Like Velásquez, he was a member of the academic community working at the Julia Zelaya College. He was thirty-two when he was last seen. On January 29, 1989, the Court held that Honduras was also responsible for the disappearance of Saúl Godínez Cruz. Honduras was ordered to pay compensation in both cases, an amount which totalled one and a half million lempiras to the family of Velásquez Rodríguez and one million three hundred thousand lempiras to the Godínez Cruz family. These first decisions of the Court were extremely important for the development of the Inter-American system for the protection of human rights.

In neither case, however, were the victims' families permitted to select their own legal representative in the proceeding. According to the relevant provisions of the American Convention on Human Rights, individual parties may only choose legal counsel to represent them before the Commission. Once the Commission or a state brings the case before the Court, the Court’s statute has been interpreted to allow only the Com-


The Commission also began investigating the disappearances of Costa Rican nationals Francisco Fairen Garbi and Yolanda del Carmen Solís Corrales, whose cases were consolidated into a third case. See Fairen Garbi & Solís Corrales Case, Inter-Am Ct. H.R., Decisions & Judgments (ser. C) No. 6 (1989) [hereinafter Garbi & Solís Corrales Case]. Fairen Garbi, a student, and Solís Corrales, a professor, were traveling together through Honduras en route to Mexico. They disappeared on December 11, 1981, after being detained by Honduran authorities in Comayagüela. Their families, expecting them home for Christmas celebrations, never heard from them again. Honduras was found responsible for the disappearances in the first two cases, but it was unanimously held that there was not sufficient evidence to establish responsibility in this third case. Id. para. 163(2).

10. Godínez Cruz Case, supra note 9, para. 203.

11. INTER-AM. CT. H.R. PRESS RELEASE, July 21, 1989. CDH-CP7/89. See also Caso Velásquez Rodríguez, Interpretacion.
mission to represent the interests of the victim.  

This Article will examine the Inter-American system and how the system is impeded by the denial of direct legal representation chosen by the victims or their families. The Article summarizes the Court's decision in the Velásquez case, which provides a background for discussion of individual participation in proceedings before the Court. After examining the position of individuals in classical international law, the Article evaluates the advisory role given to the victims' lawyers in the Honduran cases. Next, the Article discusses how the experience of the Honduran cases, in which the Commission appointed the victims' lawyers as advisors, exposes procedural weaknesses and demonstrates the need for direct legal representation. Finally, the Article examines the benefits of direct individual participation, and suggests alternative means to increase individual participation in future proceedings before the Court.

II. THE "DISAPPEARANCE" CASES IN HONDURAS

A. The Commission's Procedures

During the 1970s Honduras did not have a reputation for resorting to disappearances. This situation began to change in the 1980s, as Honduras began to suffer from the effects of the Central American conflict. As the war in Nicaragua escalated, thousands of foreign troops were stationed on Honduran soil. The Honduran military accused leftist insurgents of carrying on various acts of violence. General Alvarez,

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12. See American Convention, supra note 2, art. 61(l) (providing that only states or the Commission may bring a case to Court), art. 57 (providing "Commission shall appear in all cases before the Court"). See also infra note 67 and accompanying text (explaining that direct representation with petitioner's counsel of choice is possible before Commission, but that once a case goes to court, the Commission represents petitioner).

13. See Thomas Buergenthal, Introductory Note, 28 I.L.M. 291, 291 (1989) (introducing reprint of Velásquez Rodríguez opinion, noting that reasoning used by Court in the Godínez Cruz Case was nearly identical to that used in Velásquez Rodríguez).


15. See id. at 1-6, 7, 16-24. Unrest in the region and hostilities in neighboring Nicaragua prompted increasing governmental concern for Honduran stability and national security and led to the rising power of the military in addressing these problems. Id. See generally Committee for the Defense of Human Rights in Honduras, CODEH Annual Report: The Situation of Human Rights in Honduras (1987) [hereinafter CODEH].


17. See Americas Watch, supra note 14, at 21-22 (reporting that then chief of investiga-
head of the armed forces and *de facto* ruler of Honduras, began to resort to brutal measures of repression. From 1980 to 1984, between 100 and 150 Hondurans disappeared after being targeted for extermination by the armed forces.

Families of the disappeared, churches, and non-governmental organizations undertook strenuous efforts to learn the location of those who had disappeared. The families presented numerous writs of *habeas corpus* before Honduran tribunals and contacted embassies, international organizations, and political parties inside and outside the country. For example, prior to bringing the disappearance of Velásquez Rodríguez to the Commission, petitioners in the case had filed writs of *habeas corpus* in 1981, 1982, and 1983 in the Honduran courts. These writs, however, were never processed by the Honduran courts. The victim's father filed criminal charges in the matter of his son's disappearance, but the charges were dismissed. Such actions by families alerted the interna-
tional public to the violations of human rights occurring in Honduras. The Honduran authorities, however, steadfastly denied any knowledge of, or responsibility for, the disappearances. 24

At the requests of the families and the organizations supporting them, the Inter-American Commission began investigating the Velásquez case in October 1981. 25 Faced with a lack of cooperation from the Honduran Government, the Commission applied article 42 of its Regulations. 26 In accordance with that provision, a party's failure to participate in proceedings allows the Commission to presume that the facts alleged by the petitioners are true. 27 At the conclusion of the investigation, Honduras was found responsible for the disappearances.

When General Alvarez was expelled in 1984, the new Government of Honduras requested that the Commission reconsider its decision to hold the Government responsible for the disappearances, pending the findings of an internal governmental investigation. 28 The Commission agreed to reconsider its decision. 29 An internal investigation was conducted by a commission composed of six Honduran colonels formed for

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24. Velásquez Rodríguez Case, supra note 2, paras. 4, 5, 28 I.L.M. at 295 (recounting procedural history of case and continued denial by Honduran authorities of any knowledge of Velásquez Rodríguez' whereabouts).

25. Id. para. 1, 28 I.L.M. at 294.

26. Id. para. 4, 28 I.L.M. at 295. The Commission transmitted relevant portions of the petition to the Government and several times requested a response. Id. Article 42 allows the facts alleged in a petition to be presumed true when relevant parts of the petition have been communicated to the referred State and the State has failed to provide information in the time allotted by the Commission. Regulations of the Inter-American Commission on Human Rights (1980, modified 1987) art. 42 [hereinafter Regulations], reprinted in BASIC DOCUMENTS, supra note 2, at 90.

27. Regulations, supra note 26, art. 42. Article 42 provides:

The facts reported in the petition whose pertinent facts have been transmitted to the government of the State in reference shall be presumed to be true if, during the maximum period set by the Commission under the provisions of Article 34 paragraph 5, the government has not provided the pertinent information, as long as other evidence does not lead to a different conclusion.

Id.

28. Velásquez Rodríguez Case, supra note 2, para. 5, 28 I.L.M. at 295 (recording that Government asserted it was investigating case, that domestic remedies had not been exhausted, and that rumors suggested Velásquez Rodríguez had joined Salvadoran guerrillas). For results of Honduran internal investigation, see infra notes 29-31 and accompanying text.

29. Id. para. 6, 28 I.L.M. at 295. The Government asserted that domestic remedies remained. Id. See also Regulations, supra note 26, art. 37(l) (requiring exhaustion of local remedies before Commission will consider petition).
the purpose of reporting on alleged past disappearances. This commission's report was four sentences long. It stated only that it could not be determined whether anyone in the military was connected with disappearances, none of those who had disappeared were in government custody, background information from which to investigate was vague, and that there was a general lack of documentation concerning these allegedly disappeared persons. When the Honduras colonels' commission again failed to shed light on the cases, the Inter-American Commission reacted by reaffirming its prior decision.

Following requests by the victims' lawyers, the Commission decided on April 24, 1986 to submit the case to the Court. The Commission requested that the Court find that Honduras had violated Articles 4 (right to life), 5 (right to humane treatment), and 7 (right to personal liberty) of the American Convention. The Commission also asked the Court to rule that "the consequences of the situation that constituted the breach of such rights or freedoms be remedied and that fair compensation be paid to the injured party or parties." The Court accepted the case subject to procedural challenges to its jurisdiction.

B. The Court's Procedures

On October 31, 1986, the Honduran Government presented the Court with six preliminary objections, which focused upon alleged procedural errors committed by the Commission in handling the case. The Honduran Government asserted that the Commission failed to take steps

31. Id.
32. Velásquez Rodríguez Case, supra note 2, para. 10, 28 I.L.M. at 295.
33. Case 7920, Inter-Am. C.H.R. 30-31, OEA/ser.L/III.15, doc. 13 (1986). Article 4 of the Convention sets forth that "[e]very person has the right to have his life respected," and not to be "arbitrarily deprived of his life." American Convention, supra note 2, art. 4. Article 5 assures that every person has a right to respect for his "physical, mental, and moral integrity," and further, that no one shall be tortured or subjected to "cruel, inhuman, or degrading punishment or treatment." Those deprived of liberty must be treated with respect for their human dignity. Id. art. 5. Article 7 mandates that every person has a right to personal liberty and security, and to be free from arbitrary arrest or imprisonment. Id. art. 7.
mandated by the Convention: specifically, that the Commission failed to issue a formal declaration of admissibility, failed to sufficiently exhaust the requirement of attempts at friendly settlement, failed to conduct a preliminary hearing, failed to conduct an investigation in Honduras, failed to issue the proper final report in a timely manner, and failed to demand that petitioners exhaust what the Government alleged were remaining domestic remedies. The Commission's legal team refuted all these objections in its answer dated March 20, 1987.

After hearing both parties on June 15 and 16, 1987, the Court unanimously decided to:

1. Reject the preliminary objections interposed by the Government of Honduras, except for the issues relating to the exhaustion of the domestic legal remedies, which (were) ordered joined to the merits of the case.

2. [P]roceed with the consideration of the instant case. . . .

On June 26, 1987, the Court asked the parties to present evidence. The Commission presented both witnesses and documentary evidence; Honduras presented only documents. Hearings to examine and cross-examine witnesses took place on September 1, 1987. On October 7, 1987, the Court summoned three Honduran military authorities to testify. Testimony of two of the three was heard on January 20, 1988.

In its final decision rendered on July 29, 1988, the Court held the Honduran Government responsible for the disappearance of Velásquez. The Court further decided to give the Honduran Government and the Commission an opportunity to agree on compensation. If no agree-

36. Id. paras. 53, 57.
37. Id. para. 94 (joining issue of exhaustion of domestic remedies to merits in light of connection between domestic authorities, disappearances, domestic remedies).
38. See Velásquez Rodríguez Case, supra note 2, para. 137, 28 I.L.M. at 316 (mentioning lack of active participation by Honduras, noting that case therefore less than adequately presented).
39. See id. para. 29, 28 I.L.M. at 299 (recounting text of Court Order summoning three witnesses).
40. Id. para. 34, 28 I.L.M. at 300. See id. para. 31, 28 I.L.M at 299 (explaining Honduran Government requested those hearings be closed for state security reasons).
41. Id. para. 194, 28 I.L.M. at 329. The Court's judgment of July 29, 1988 in Velásquez Rodríguez was its first decision in three cases submitted by the Commission. See id. para. 35, 28 I.L.M. at 300. The subsequent decision in Godínez Cruz was virtually identical, thus it is not necessary to summarize them separately. See supra note 9 and accompanying text. Honduras was held liable for the disappearance of Godínez Cruz. Godínez Cruz Case, supra note 9, at 85 (1989). In the Fairen Garbi and Solís Corrales cases, however, the Court concluded that the evidence was insufficient to hold the government liable. Garbi & Solís Corrales Case, supra note 9.
42. Velásquez Rodríguez Case, supra note 2, para. 191, 28 I.L.M. at 329.
ment could be reached within six months of the date of the Final Decision, the Court would fix the amount of compensation to be paid.\textsuperscript{43} The Court proceeded to determine the amount of compensation on July 21, 1989, after the negotiations failed.\textsuperscript{44}

In addition to the Commission's request for compensatory damages, on March 10, 1989, the victims' lawyers presented a brief directly to the Court which argued that, in addition to compensatory damages, reparations should include: investigation and punishment of those individually responsible for the disappearances; measures for the public rehabilitation of the reputation of the victims; and punitive damages. The Court ordered a public hearing on the issue of compensation and allowed the victims' lawyers to present their views directly to the Court. The Court's final decision on damages addressed the arguments of the victims' lawyers separately from those of the Commission's legal team.\textsuperscript{45}

C. The Court's Decisions

Both the Court's final decision and the decision on compensation represent enormous breakthroughs for the protection of human rights in the hemisphere. In its final decision, the Court interpreted the scope of some rights and governmental duties laid down in the American Convention.\textsuperscript{46} It also decided various issues related to proof: standard of

\textsuperscript{43} Id. para. 194(6), 28 I.L.M. at 330 (specifying Court's retention of jurisdiction over issue of compensation during negotiations).


\textsuperscript{46} As requested by the Commission, the Court found Honduras responsible for the violations of article 4 (the right to life), article 5 (the right to integrity of the person, including the right to dignity and freedom from torture), and article 7 (the right to personal liberty, including freedom from arbitrary arrest or imprisonment). Velásquez Rodríguez Case, supra note 2, paras. 155-57, 28 I.L.M. at 322-25. The Court ruled further that Honduras' behavior also violated article 1 of the Convention, concerning the state's obligation to respect the rights of its citizens. Id. paras. 161, 178, 28 I.L.M. at 323, 326. The Court held that Honduras' affirmative duty to its citizens requires not only that it refrain from violating specific civil and political rights, but also that it "ensure that any violations are considered and treated as illegal acts, which, as such, may lead to the punishment of those responsible and the obligation to indemnify the victims for damages." Id. para. 175, 28 I.L.M. at 325. To find a government guilty of a disappearance, the individual perpetrator need not be identified; it is enough to prove "whether a violation of the rights recognized by the Convention has occurred with the support or acquiescence of the government, or whether the State has allowed the act to take place
proof, burden of proof, and admissibility of evidence. The Court without taking measures to prevent it or to punish those responsible.” Id. para. 172, 28 I.L.M. at 326.

The Court found that Honduras did not even conduct a proper investigation into the disappearances, much less enforce its own law in condemning the actions of government officials. See id. paras. 180-81, 188, 28 I.L.M. at 327, 328 (characterizing failure to investigate as violation of American Convention duty to ensure right to life recognized by article 4).

47. Id. para. 127, 28 I.L.M. at 315-16. The Court first noted that an articulated standard was absent in the Convention, the Court’s Statute, and the Court’s Rules of Procedure. Id. The Court stated that an international judicial procedure has to be less formal than its domestic counterpart, because the state, the subject of the complaint, controls “the means to verify acts occurring within its territory.” Id. paras. 128, 136, 28 I.L.M. at 316. See AMNESTY INTERNATIONAL, DISAPPEARANCES: A WORKBOOK 78 (1981) [hereinafter DISAPPEARANCES] (noting that inability to breach governmental efforts to conceal disappearances is an element of practice of disappearances making it “unique among human rights violations”). The Court further recognized that the standard of proof is dependent upon the nature, character, and seriousness of each case. Velásquez Rodríguez Case, supra note 2, para. 128, 28 I.L.M. at 316. Therefore, the Court had to take into account the seriousness of a finding that a state is guilty of the practice of disappearance, a practice characterized “by an attempt to suppress all information about the kidnapping or whereabouts and fate of the victim.” Id. para. 131, 28 I.L.M. at 316.

The Court concluded that, while the existence of a practice of disappearances must be established by direct evidence, proof of the disappearance of any one particular individual may be shown by circumstantial evidence or by inference. Id. para. 124, 28 I.L.M. at 315.

48. See Dinah L. Shelton, Judicial Review of State Action by International Courts, 12 FORDHAM INT’L L.J. 361, 379-84 (1989) (discussing the Court’s practice in allocating burden of proof and focusing on judicial burden shifting in Velásquez Rodríguez). The matter of burden of proof is of great importance due to the nature of disappearances. Disappearances usually involve a governmental conspiracy of cover-ups, and hence the enforcement officials responsible for them are unlikely to cooperate in the investigation. See id. at 383-84.

49. The Court concluded that it would not consider direct evidence alone because that type of evidence would be almost impossible to obtain in cases of disappearances attributable to a government. Velásquez Rodríguez Case, supra note 2, paras. 131, 140, 28 I.L.M. at 316, 317 (characterizing “this type of repression” by attempts to suppress all information). Accordingly, the Court stated that “[c]ircumstantial evidence, indicia, and presumptions may be considered, so long as they lead to conclusions consistent with the facts.” Id. para. 130, 28 I.L.M. at 316. The Court felt that otherwise it would be impossible to prove that an individual had disappeared. Id. para. 124, 28 I.L.M. at 315. The practice of international tribunals using indirect evidence has long been affirmed. See id. para. 127, 28 I.L.M. at 315-16 (comparing Corfu Channel Case (U.K. v. Ireland), 1949 I.C.J. 4 (April 9), and Military and Paramilitary Activities (Nicar. v. U.S.) 1986 I.C.J. 4 (June 27)).

The Court accepted a wide range of evidence offered by the Commission. It accepted documents as authentic and truthful when Honduras did not object to them. Id. para. 140, 28 I.L.M. at 317. Also, the Court held that although newspaper clippings offered as evidence by the Commission were not “documentary” evidence, they were admitted either to corroborate testimony, for evidentiary value, or simply because they contained information described by the Court as “public and well-known facts.” Id. para. 146, 28 I.L.M. at 318. The Government objected to the Commission’s use of certain witnesses, arguing that they were not impartial because during cross examination the witnesses stated that they opposed the Alvarez dictatorship. Id. para. 142, 28 I.L.M. at 317. The Court found that a witness could not be disqualified solely on the grounds of his or her political views toward a given government. Id. para. 143, 28 I.L.M. at 317-18 (holding that allegation of bias “is insufficient to rebut testimony which is
described the crime of disappearance, further defined the scope of the obligation to exhaust local remedies, and established procedures for compensation of victims. Finally, the Court ordered the Government fundamentally consistent with that of other witnesses”). See also id. para. 144, 28 I.L.M. at 318 (specifying “human rights are higher values not derived of nationality, but rather of ‘attributes of [the] human personality’`).

50. The Court’s opinion is the first explicit description of disappearances given by an international tribunal. Id. para. 147, 28 I.L.M. at 318-20 (examining facts of case in context of pattern of practice). For a discussion of disappearances and an analysis of how they relate to international law, see Maureen R. Berman & Roger S. Clark, State Terrorism: Disappearances, 13 Rutgers L.J. 531 (1982). The authors note that the term desaparecido arose from the mid-1960s practice of the Guatemalan Government where death squads abducted and killed forces hostile to the government. Id. at 531 (citing DISAPPEARANCES, supra note 47, at 75).

The Court found that individuals considered dangerous to the state’s security first were put under surveillance. A second step was detention, either openly by the security forces, or kidnapping by disguised military personnel in unmarked vehicles. Velasquez Rodriguez Case, supra note 2, at 65, para. 147, 28 I.L.M. at 318. The victims were then interrogated and subjected to “cruel and humiliating torture treatment.” Id. para. 147(d)(iii), 28 I.L.M. at 319. Those murdered were buried in clandestine graves. Id. Finally, the authorities would deny any knowledge of the victim’s whereabouts. Id. para. 147(d)(iv), 28 I.L.M. at 319. Applying the aforementioned framework to the present case, the Court concluded that the Commission had proven that:

1) a practice of disappearances carried out or tolerated by Honduran officials existed between 1981 and 1984;
2) Manfredo Velásquez disappeared at the hands of or with the acquiescence of those officials within the framework of that practice; and
3) the Government of Honduras failed to guarantee the human rights affected by that practice.

Id. para. 148, 28 I.L.M. at 320-21.

One might further note that, although the practice of disappearances has been pervasive in Latin America, particularly the southern cone, it has been utilized throughout the world. Berman & Clark, supra at 532 (listing examples of countries where disappearances have been reported: Afghanistan, Cambodia (Democratic Kampuchea), Ethiopia, Equatorial Guinea, the Philippines, and Uganda). Numerous other countries have carried out disappearances on a lesser, or less publicized, scale. See generally Report of the Working Group on Enforced or Involuntary Disappearances, supra note 19.

51. Velásquez Rodríguez Case, supra note 2, paras. 63-64, 28 I.L.M. at 305-06. The Court interpreted article 46(1)(a) of the American Convention, which requires that domestic remedies be exhausted in accordance with “generally recognized principles of international law.” Id. para. 63, 28 I.L.M. at 305 (quoting art. 46(1)(a) of the American Convention, supra note 2). The Court held that principles of international law do not refer only to the formal existence of such remedies, but also to their “adequacy and effectiveness.” Id. The Court went on to explain that adequate domestic remedies are “those which are suitable to address an infringement of a legal right,” id. para. 64, 28 I.L.M. at 305, and that an effective remedy is one capable of producing the result for which it was designed. Id. paras. 64, 66, 68, 28 I.L.M. at 305-06.

While the complaining party has the burden of proof on the merits of the case, that rule does not apply to exhaustion of domestic remedies. Shelton, supra note 48, at 381. The state has the burden of proving that domestic remedies remain and, if utilized, will be effective. If the state is successful, the burden shifts to the opposing party to show that the remedies were exhausted or that such remedies fall within the exceptions of article 46(2). Id. at 381-84.

52. Velásquez Rodríguez Case, supra note 2, para. 194, 28 I.L.M. at 381-84. The Court
of Honduras to pay compensation.\textsuperscript{53} Notwithstanding the value of the Court's first decisions, the Honduran cases illustrate the need for further development of the Inter-American system. In the Honduran cases, the Court decided that the questioning of three summoned Honduran military personnel would not be public.\textsuperscript{54} In the future, questioning of witnesses should always be conducted publicly.

Additionally, responsibility of the Honduran Government for the killing of two witnesses was not sufficiently explored.\textsuperscript{55} A former Honduran army sergeant, José Isaías Vilorio, was to appear and testify at trial.\textsuperscript{56} He was killed two weeks before his scheduled appearance, his body found draped with the standard of a leftist group.\textsuperscript{57} Human rights groups, including the Honduran Human Rights Commission, claimed the Government carried out this assassination. In the same month, January of 1988, another trial witness was assassinated along with a companion while they were sitting in a parked car. This witness, Miguel Angel Pavón, had testified against the Government of Honduras in September of 1987.\textsuperscript{58}

The Court formally condemned the two killings. On January 15, 1988, the Court adopted a resolution: (1) acknowledging the deaths of two witnesses, and that others had received threats; (2) considering the moral, procedural, and legal implications of these actions; and (3) resolving to urge Honduras to prevent further infringements, and to investigate and impose punishment for the crimes.\textsuperscript{59} Faced with a lack of full cooperation from Honduras, however, the Court could have requested authorization from Honduras to send a member of the Court to Honduras.

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\textsuperscript{54} Vélásquez Rodríguez Case, supra note 2, para. 33, 28 I.L.M. at 300.

\textsuperscript{55} \textit{Id.} paras. 40-41, 28 I.L.M. at 301.

\textsuperscript{56} \textit{Id.}

\textsuperscript{57} \textit{See id.} para 40, 28 I.L.M. at 301.

\textsuperscript{58} \textit{Id.}

This judge could have conducted interviews with Honduran authorities and others with information about the killings.

The Court also failed to deal with other issues of import to the families of the disappeared. The Court's decisions did not address specifically the issue of punishment of the individuals responsible for disappearances, nor did they address specific measures to rehabilitate the reputations of the disappeared.60

The victims were not directly represented in the proceedings before the Court. While representation by lawyers of the victims' own choice was possible before the Commission, the victims were not allowed to choose lawyers to represent them before the Court. The establishment of individual rights at the international level—a process that started after the Second World War—has not yet been developed to its full potential to allow individuals to act at the international level in defense of their rights.

III. PARTICIPATION BY INDIVIDUALS

A. Classic International Law and the Rights of Individuals

Traditional international law was not concerned with the individual.61 While there were some earlier instances of recognition of the rights of individuals, the change in this area was fueled mainly by the crimes committed by the Nazis before and during World War II. After the War, the international community identified international crimes for

60. The Court said in its final decision that Honduras remained obligated to research the crimes and punish those individuals responsible but did not include any measures in the operational part of its decision. See Velásquez Rodríguez Case, supra note 2, para. 174, 28 I.L.M. at 325 (noting state's legal duty to investigate, punish those found responsible, and ensure compensation for victims, but specifying no measures). See generally Thomas Buergenthal, To Respect and to Ensure State Obligations and Permissible Derogations, in THE INTERNATIONAL BILL OF RIGHTS 72 (Louis Henkin ed., 1981) (discussing states' responsibilities to ensure rights of its citizens). See also Naomi Roht-Arriaza, Comment, State Responsibility to Investigate and Prosecute Grave Human Rights Violations in International Law, 78 CAL. L. REV. 449 (1990) (discussing treaty, customary law basis for such duty).

61. Through history, individuals traditionally have had to rely on the protection of states to preserve their human rights. See Louis B. Sohn, The New International Law: Protection of the Rights of Individuals Rather than States, 32 AM. U. L. REV. 1, 1-13 (1982) (tracing evolution of human rights protections and gradual incorporation of individuals as subjects of international law independent from states). The participation of individuals in international court proceedings represents an elevation of the position of the individual, but the modern law continues to contain some of the jurisprudence and procedural rules of the past. Id. at 6-7. See also LOUIS B. SOHN & THOMAS BUERGENTHAL, INTERNATIONAL PROTECTION OF HUMAN RIGHTS 1-21 (1973) (setting forth historical views of position of individual in international law and including a bibliography of works concerning status of individual in international law).
which individuals in addition to states would be held responsible. The international community also started developing an International Bill of Rights, which would identify both substantive rights and procedures to protect those rights. The process resulted in the recognition of individuals' rights at the international level, but procedural rights allowing individuals to defend themselves have not yet been fully achieved.

As with the Inter-American Court of Human Rights, individuals are not permitted to participate directly in cases before the International Court of Justice. The Statute of the International Court of Justice precludes individuals from initiating proceedings before the Court: "Only States may be parties in cases before the Court." Individuals are limited to claiming violations of their internationally recognized rights in petitions presented to various United Nations organs and special committees or rapporteurs. At that level they are entitled to their own legal representation.

In regional systems established under the European and American Conventions on Human Rights, individuals are allowed direct representation before the regional commissions. However, until 1982 no direct representation was permitted before any regional system's courts.


66. The Inter-American system, according to article 61(1) of the Convention, provides: "Only the States Parties and the Commission shall have the right to submit a case to the Court." American Convention, supra note 2, art. 61(1). The European system similarly states: "Only the High Contracting Parties and the Commission shall have the right to bring a case before the Court." European Convention for the Protection of Human Rights and Fundamental Freedoms, opened for signature Nov. 4, 1950, art. 44, 213 U.N.T.S. 221, 246 [hereinafter
European Court changed its practice in that year to allow direct representation.\textsuperscript{67} The Inter-American Convention permits victims' lawyers to request participation in proceedings before the Court as advisors to the Commission.\textsuperscript{68} However, lack of direct representation still poses serious problems for individuals because it is uncertain whether representation through other international actors will satisfy the individual's need for justice.

Individuals cannot be certain that states will act favorably on their behalf simply because their human rights have been violated. State action is usually based upon economic, political, or security concerns, rather than solely humanitarian considerations.\textsuperscript{69} Organs of international organizations, particularly bodies of independent experts, are better prepared than are states to act on behalf of victims of human rights violations.\textsuperscript{70} However, organs such as the Inter-American Commission on Human Rights also represent interests beyond those of the individ-

\textsuperscript{67} The European system, like other systems, does not allow individuals to bring cases to the Court; however, the European system does permit a petitioner direct representation before the Court. \textit{See} Revised Rules of Court, 1982 \textit{Y.B. Eur. Conv. on H.R.} 5, 14, Rule 30(1), effective Jan. 1, 1983 [hereinafter \textit{EOR. Cr. H.R.}] which provides:

\begin{quote}
The applicant shall be represented by an advocate authorized to practice in any of the Contracting States and resident in the territory of one of them or by any other person approved by the President. The President may, however, give leave to the applicant to present his own case subject, if need be, to his being assisted by an advocate or other person as aforesaid.
\end{quote}

\textit{Id.}

\textsuperscript{68} Rules of Procedure of the Inter-American Court of Human Rights, reprinted in \textit{BASIC DOCUMENTS}, supra note 2, at 124 (allowing Commission to seek assistance of victims' lawyers).

\textsuperscript{69} \textit{See} OSCAR SCHACHTER, \textit{INTERNATIONAL LAW IN THEORY AND PRACTICE} 330-61 (1985) (characterizing governmental motives behind decisions concerning human rights instruments, enforcement of norms therein as consisting primarily of "judgments of national interests, the attitudes of influential elites, and to some degree underlying political philosophies and cultural beliefs" - clearly distinct from legal character of instruments, norms).

\textsuperscript{70} \textit{See id.} (commenting that despite pressure from political factors, regional bodies such as Inter-American Court of Human Rights are "committed to a non-partisan examination of the facts and the law").
For example, they may consider the resources involved in a given case, the existing political framework, and the impact the case will have on the system as a whole. For these reasons, the victims in the Honduran cases sought active involvement through representation by lawyers of their own choice in the pursuit of their claims. Active involvement was essential to enable participation in planning the strategy to be implemented before the Court and to support and protect the victims' interests.

B. Representation of Individuals in the Honduran Cases

Once the Commission brought the Honduran disappearance cases to the Court, the victims' lawyers identified and analyzed three possible options to confront the dangers arising from the lack of direct representation. The first was to cooperate informally with the Commission. This approach would have left the cases entirely under the Commission's control with only marginal power for the victims' families. Furthermore, the families would have no access to information as a matter of right and would have few opportunities to express their views on the litigation strategy.

A second option was to ask the Court to reinterpret or change its rules to allow for direct individual representation. This option did not appear viable because, in the lawyers' opinion, the Court would not risk engaging in liberal procedural interpretations that might cause the Honduran Government to leave the proceedings. Furthermore, courts often create procedural breakthroughs when they decide on the merits against a plaintiff. The lawyers did not wish to risk winning the procedural point only to lose on the substantive matter.

The third option, and the one finally chosen, was to request the Commission to appoint the lawyers as legal advisors under article 21 of the Commission's Regulations. This option was particularly attractive

71. See id. (noting that even regional nonpolitical bodies such as Inter-American and European Courts of Human Rights are not immune to political concerns).

72. See infra note 79 and accompanying text (concerning lack of financial resources); see also J. Lauchlan Wash et al., Conference Report - The Inter-American Human Rights System: Into the 1990's and Beyond, 3 Am. U. Int'l L. & Pol'y 517, 529-35, 543 (1988) (exploring ramifications of political considerations on system's effectiveness, pointing out probable weakening in resolutions and other activities, due to individual state fears of being targeted in the next resolution) [hereinafter Conference Report].

73. See Statute of the Inter-American Court of Human Rights (1979), reprinted in BASIC DOCUMENTS, supra note 2, at 105-115.

74. See Regulations, supra note 26, art. 71, reprinted in BASIC DOCUMENTS, supra note 2, at 75-115.
because it followed prior European practice, and the Inter-American system had been modeled upon the European Convention on Human Rights. Until 1982, when the European Court formally changed its rules to allow for individual representation, the European Commission developed the practice of appointing the victims' lawyers as advisors in cases before the Court. Under this option, the Commission, not the victims, would have technical control over the case. The victims' lawyers, however, believed that their knowledge of the case and their personal links with members of the Commission and its secretariat assigned to the case lessened the risks of working under the Commission's direction.

After the victims' lawyers were appointed as legal advisors to the Commission, they were given the opportunity to participate in planning the legal strategy for the case. The strategy of the Commission was in fact greatly influenced by the participation of the victims' lawyers. Examples of such contributions to the case are the treatment of the Court as a trial court and pursuit of a strategy to depoliticize the proceedings. The Court could have been treated as either a trial court or as an appellate court. Because this was the first contested case to be taken to the Court, the procedure before the tribunal could be somewhat shaped. The lawyers foresaw that the Honduran Government's strategy would be to focus on procedural matters. Since the victims' lawyers were convinced that disappearances had taken place, they thought that the Honduran Government would try to avoid discussion on the merits, and instead would try to focus on technical procedural matters. Moreover, the Commission had not strictly followed the letter of the American Convention concerning admissibility, friendly settlement, and exhaustion of local remedies. This provided opportunities for Honduras to complain on technical grounds. The victims' lawyers then suggested that the Commission bring the merits to the forefront, requiring the trying of the case.

Focusing on the merits instead of procedural matters facilitated concentration on the inhumanity of disappearances, rather than on dry tech-

75. See Kevin Boyle, Practice and Procedure on Individual Applications Under the European Convention, in GUIDE TO INTERNATIONAL HUMAN RIGHTS PRACTICE, supra note 65, 133, 143-44 (describing European Commission's approach to legal representation before the Court).

nicalities. This, in turn, had more potential to mobilize public opinion, and contribute to "education" in human rights. To achieve their goals, the victims' lawyers suggested treating the Court as a trial court, as opposed to an appellate body. The Commission decided to follow this recommendation. Accordingly, witnesses and documentary evidence could be introduced by the lawyers. When the Commission presented evidence, neither Honduras nor the Court objected. Thus, the Commission achieved its goal without discussion. This participation, achieved without an explicit legal framework, led the Court to adopt new Rules of Procedure in 1991, formally allowing victims' lawyers to act under the Commission's guidance.

The victims' lawyers also wanted to depoliticize the proceedings. The lawyers thought that Honduras might leave the procedure if it could argue that the Commission and the lawyers were ideologically motivated. Also, they thought that it would be easier for the Court to hold against Honduras if the case were more "technical" than "political." As this was the first case of its kind, politicization could have threatened the integrity of the whole system. To achieve their goal, the lawyers constantly advised against including political matters in the case to avoid detracting from the legal matters at issue. Applying this strategy, broad political matters, such as the causes of the Central American conflict, were avoided.

The victims' lawyers, the victims' families, and the non-governmental organizations supporting the victims were able to identify important witnesses for the case. Thus, the lawyers had an invaluable opportunity to suggest to the Commission names of witnesses who could testify on such matters as the pattern of disappearances carried out in Honduras, the role of the security apparatus, and the role of the judiciary. They gathered evidence, wrote legal memoranda, and suggested witnesses. They also played an active role in the Court proceedings by examining and cross-examining witnesses, arguing different aspects of the Commission's case, and presenting the closing arguments in conjunction with the Commission's lawyers.

The participation of the victims' lawyers greatly benefitted the Commission, the Court, and the process as a whole. For example, the Commission lacked the personnel and material resources to handle the case

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78. Id. art. 22 (2).
fully. Only two lawyers were assigned by the Commission. The inclusion of the victims’ lawyers as advisors enriched the Commission’s work and enlarged its legal team. The victims’ lawyers knowledge of the case made them indispensable to the Commission for the purpose of gathering evidence and identifying witnesses. These lawyers also assisted the Commission by securing outside funding to pay the expenses of witnesses who testified in Costa Rica.

The strengthening of the Commission’s work resulting from the addition of the victims’ lawyers also benefitted the Court because the proper administration of justice requires that all necessary facts and legal reasoning be brought to the Court’s attention. Additionally, the participation of these lawyers contributed to the legitimacy of the system as a whole. Through their lawyers, the families of the victims and the non-governmental organizations supporting them felt represented in a procedure which otherwise would have involved only states and the Commission.

Despite these benefits, some fundamental shortcomings of the strategy of indirect representation were demonstrated in the Honduran cases and have implications for future cases. For the most part, the victims’ lawyers and the Commission’s lawyers agreed on strategy, but differences of opinion did arise. For example, the victims’ lawyers wanted the Commission to take a more aggressive stand against the Honduran Government for its failure to cooperate with the Court in the investigation of the killing of two witnesses. The victims’ lawyers wanted the Commission to petition the Court to order the Honduran Government to punish those responsible for the disappearances and to pay punitive damages. Additionally, the close personal relationships existing between the victims’ lawyers and those of the Commission created a positive working atmos-

79. See Claudio Grossman, Proposals to Strengthen the Inter-American System of Protection of Human Rights, 32 GERMAN Y.B. INT’L L. 264, 274-75 (discussing organizational limitations within system, including insufficient staff or resources for examination and investigation of petitions, lack of financial support). See also Conference Report, supra note 72 (explaining basic procedures and analyzing current role of Inter-American Commission and Court, and making recommendations for enhanced future effectiveness). Inherent constraints on the system’s effectiveness include the system’s mandates that the Commission attempt friendly settlement, and that petitioners exhaust domestic remedies completely. Id. at 540. See American Convention, supra note 2, art. 48(1)(f) (providing that Commission will facilitate friendly settlement); and art. 46(1)(a) (setting forth that domestic remedies must be exhausted for Commission to accept a petition), art. 46(2) (providing that requirement be met unless domestic remedies are not provided, or petitioner is denied access to them, or judgments are unreasonably delayed by the state). Because the Inter-American system is inter-governmental in nature, it is particularly difficult to protect the Court’s ability to apply Convention principles in a neutral political context. Conference Report, supra note 72, at 542-43.
phere in this case. This important personal factor may not exist in future situations. The absence of such cooperation could lead to insurmountable divisions on legal strategy that could result in the victims' disaffection with the entire system.

The Commission's discretionary power to appoint victims' lawyers as advisors not only fails to guarantee participation by victims, but also creates difficulties for the Commission. It is not in the Commission's interest to open itself up to pressure from governments, which could seek to prevent the appointment of certain victims' lawyers. Even if the Commission were always to appoint the victims' lawyers as advisors, important problems would remain. The lawyers would act under the Commission's direction and this direction could become distorted because the Commission performs roles other than representing the interests of the victims. Dissatisfied victims could then blame the Commission for the manner in which the proceedings were conducted or for negative results. Moreover, broader policy goals would be served by direct representation in the Inter-American system.

C. Valuable Policy Goals Served By Direct Representation in the Inter-American System

The desire to voice one's views about issues that affect one's life is a fundamental attribute of the human personality. Violations of human rights are attempts to silence that voice. Guaranteeing the presence of the victims' voices in judicial proceedings is thus of paramount importance.

Full individual participation can reduce human rights abuses by confronting the repressive goal of silencing victims, developing social acceptance of peaceful solution of conflicts, and enriching judicial proceedings. Each of these will be addressed in the following sections.

1. Confronting the Goal of Repression

Repressors reject any interference with their exercise of power. They would like their will to be translated without question into action. To achieve their goals, repressive governments resort to intimidation and misinformation.80 Domestically, they want their citizens to believe that they are omnipotent and that no protection is available for those who

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80. See Kleinman, supra note 6, at 1038-39 (describing effect of forced disappearances on relationship of state to society). Exercise of state power through disappearances allows a state to evade legislative and judicial controls on its authority, and to make ineffectual such non-governmental controls as the media; instead the state effectuates the psychological effects of state repression. Id. See also Berman & Clark, supra note 50, at 536-40 (examining disappear-
Disappearances in Honduras
defy them. Internationally, they seek to avoid negative public opinion and interference by foreign governments or international organizations. They want to send the message that internal opposition to their rule is isolated and forgotten.

International reactions can breach that isolation. Consequently, strengthening international human rights norms and enforcement mechanisms will undercut the purposes and the means of repression. Direct access to international fora by individuals is an essential means to confront repression.

Direct access allows individuals "to tell their story" on an international level. For victims, being able to tell "their truth" is valuable in itself. It also allows victims to confront oppressors who may deny their very existence. Direct access empowers those who, in the view of their oppressors, were supposed to be totally helpless.

Direct representation is consistent with the actual behavior and expectations of the victims. For example, in the Honduran cases, the families of the victims were extremely active before both the Inter-American Commission and the Inter-American Court. They constantly provided their lawyers with information, suggestions for strategies, and advice as to the political ramifications of the case. Their behavior expressed the deeply rooted belief in the right to pursue one's own case.

2. Social Acceptance for the Judicial Solution of Conflicts

Victims confronted with an inoperative judiciary lose their confidence in the existence of peaceful means of redress. For this reason, the existence of an authoritative judiciary is essential to the rule of law. When the domestic judiciary fails, exposure to and participation in international judicial institutions can create trust in the concept of impartial justice. This trust can result in an overall reinforcement of the rule of law. Direct representation before an international court would thereby strengthen the belief of individuals in the crucial role of the judiciary in the peaceful solution of societal problems.

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82. See Resolution XXXI of the Ninth International Conference of American States (1948), Inter-American Court to Protect the Rights of Man, recorded in CONFERENCES OF AMERICAN STATES, 1942-54, at 270 (2d Supp. 1958) (reporting Conference considered creation of court to protect human rights necessary "inasmuch as no right is genuinely assured unless it is safeguarded by a competent court").
3. Enriching Judicial Proceedings

In addition to general societal goals of promoting peaceful settlement, direct representation by the victims adds another legal actor to court proceedings. This new actor can suggest witnesses, bring evidence, and file motions, thereby increasing the court's opportunities to establish the truth.

In principle then, direct representation before courts should be allowed and encouraged. After all, the right to bring one's own grievance directly to a tribunal is a widely accepted institution of civilized behavior.

These reasons convinced the European Court on Human Rights to modify its rules in 1982 to allow for direct victim representation. The Inter-American system, which had adopted the European Court's original denial of direct victim representation, has been left copying a model no longer in existence.

IV. MEANS TO ACHIEVE DIRECT REPRESENTATION

Two different options to achieve direct representation are available in the Inter-American system. The first option is to interpret the existing legal provisions as allowing such representation. A second option would be to modify the text of the Court Rules to expressly permit direct representation.

A. Interpreting the Existing Legal Framework.

Under the new Rules of Procedure adopted by the Inter-American Court, victims' lawyers appointed as legal advisors by the Commission can participate in proceedings before the Court. The Rules of Procedure explicitly set forth norms concerning that participation. They include provisions requiring that families be in-

83. See supra notes 66, 67, 76 and accompanying text (discussing changes in European system procedures).
85. See Thomas Buergenthal, Human Rights in the Americas: View from the Inter-American Court, 2 Conn. Int'l L. 303, 303-05 (1987) (acknowledging European system's role as model; distinguishing, however, current difficulties of European, Inter-American systems).
86. 1991 Rules, supra note 77, art. 22 (2).
87. Id. (requiring the Commission to inform the Court if the lawyers for the original petitioner are among the Commission legal advisors).
formed of the cases;\textsuperscript{88} notification of the victims' lawyers,\textsuperscript{89} as well as consultation on certain aspects of the proceedings;\textsuperscript{90} notification of preliminary measures;\textsuperscript{91} and the right to appear before the Court\textsuperscript{92} and to question witnesses and other relevant persons.\textsuperscript{93} The Court has to record the presence of all participants in the proceedings, including the victims' lawyers,\textsuperscript{94} who have the opportunity to review the transcripts.\textsuperscript{95}

The new procedural rights given to the victims' lawyers include the right to be consulted when the case is withdrawn by one of the parties,\textsuperscript{96} or when the case is settled.\textsuperscript{97} When a case is settled, the Court is empowered to decide to continue the proceedings.\textsuperscript{98}

Under article 44(2) of the Rules of Procedure, the Court may request that the representatives of the victims express their views when it decides on the appropriate penalties to be imposed upon a guilty party.\textsuperscript{99} The Court Rules of Procedure allow them to articulate their views on punishment, orally or in writing, irrespective of the Commission's opinion. Under article 34, the Court may order provisional measures at any stage of the proceedings in grave cases or in the case of imminent irreparable damage to persons.\textsuperscript{100} The lawyers of the victims are free to re-

\begin{itemize}
\item \textsuperscript{88} \textit{Id.} art. 28(1) (stating that as soon as a case is filed, the Secretary of the Court must send copies of the filing to the original petitioner, the alleged victim, and his or her family).
\item \textsuperscript{89} \textit{Id.} art. 28(3) (stating that the Secretary of the Court is to request respondent state to designate an agent. If appropriate, Commission is to appoint Delegates within two weeks of notice pursuant to articles 21 and 22 of the Court Rules).
\item \textsuperscript{90} \textit{Id.} art. 29(2) (noting that the Court's President will consult with the Commission's delegates and the agents of the respondent state as to the needs for further written procedural steps).
\item \textsuperscript{91} \textit{Id.} art. 31(3) (requiring the Secretary of the Court to "immediately transmit" preliminary objections to interested parties listed in article 28(1)).
\item \textsuperscript{92} \textit{Id.} art. 33 (designating that the President of the Court directs hearings, sets order of participation).
\item \textsuperscript{93} \textit{Id.} art. 41(2) (explicitly allowing the lawyers of the victims serving as Commission delegates to question witnesses, experts, and all other persons summoned by the Court).
\item \textsuperscript{94} \textit{Id.} art. 42(1)(b) (ordering the Court to record all the participants in each session, including the representatives of the victims).
\item \textsuperscript{95} \textit{Id.} art. 42(2) (giving a right to the delegates, including the representatives of the victims, to receive a copy of the transcripts in order to correct any mistakes), art. 42(4) (entitling the delegates to receive a final copy of the transcript).
\item \textsuperscript{96} \textit{Id.} art. 43(1) (explicitly requiring the Court to hear the lawyers of the victims in the event that the Commission decides to withdraw from the case).
\item \textsuperscript{97} \textit{Id.} art. 43(2) (specifying that the Court must hear the lawyers of the victims when the parties communicate to the Court that they have reached an out of court settlement or other solution.)
\item \textsuperscript{98} \textit{Id.} art. 43(3) (stating that Court may continue case in spite of petitioner's desire to discontinue, or in spite of offer to settle).
\item \textsuperscript{99} \textit{Id.} art. 44(2).
\item \textsuperscript{100} \textit{Id.} art. 24 (allowing the Court to take provisional measures upon motion of party, or at own discretion).
\end{itemize}
quest such measures. Finally, article 29 mentions the Commission’s delegates generically, a reference that could also include the representatives of the victims working on the Commission’s team. Similarly, articles 30 and 32 both use the term “delegates,” without differentiating between the Commission’s own staff and the representatives of the victims.

The Rules of Procedure do not state explicitly that the Commission is required to appoint victims’ lawyer as legal advisors. The Commission’s failure to do so, however, amounts to a violation of the letter and spirit of the Inter-American system of protecting human rights. Article 61 of the Convention only excludes victims from submitting a case to the Court, but does not preclude direct representation after submission. In fact, the Convention as a whole supports the premise that victims have a right to direct representation once a case has been submitted.

Denial of the right to direct representation can be interpreted as a violation of the Convention’s due process requirement. Under the Convention denial of due process is not limited to violations in the domestic legal system of a state party. The minimum judicial guarantees required under due process apply also to the workings of the Inter-American Court itself. These due process guarantees should be applied except when expressly modified by the Convention. The Convention only excludes the victim from submitting a case to the Court; the Convention does not exclude the right to direct representation. This interpretation is supported by article 8 of the Convention, which establishes due process and should be liberally interpreted. As the European Court noted in its Delcourt decision, “In a democratic society . . . the right to a fair administration of justice holds such a prominent place that a restrictive interpretation of [provisions related to due process] would not correspond to the aim and the purpose of that provision.” The same reasoning certainly would apply to article 8 of the American Convention, which sets forth due process requirements, and to article 25 of the Con-

101. Id. art. 29.
102. Id. arts. 30, 32.
103. American Convention, supra note 2, art. 61(1) (permitting only a state on the Commission to bring a case to the Court).
104. See id. art. 8(1) (setting forth right to hearing within reasonable time, with appropriate guarantees by competent tribunal for determination of any rights or freedoms).
105. Id. art. 25(1) (providing everyone has the right to simple and prompt recourse, or any other effective recourse, to a competent court or tribunal for protection against acts that violate his fundamental rights recognized by the constitution or laws of the state concerned or by this Convention).
vention, which refers to judicial protection.107

Article 29 of the American Convention establishes standards to interpret the Convention.108 This provision should be read to require an interpretation of the Convention that recognizes the right of direct representation. Article 29(a) does not permit an interpretation that would restrict a right to a greater extent than set forth in the Convention.109 The Convention only restricts the right of the victims to submit a case directly to the Court.110 Furthermore, section (c) of article 29 does not allow an interpretation that would preclude rights or guarantees that are inherent in the human personality.111 The right to have a lawyer of one's own choosing is such an inherent right. Finally, section (d) of article 29 establishes that the Convention shall not be interpreted to exclude or limit the American Declaration of the Rights and Duties of Man.112 Article 18 of that instrument recognizes the right to a fair trial.113 Denial of the right of victims to choose their own lawyers would also violate the American Declaration. The Court itself has said that the humanitarian purpose of human rights treaties should be taken into account when interpreting such treaties.114 In contrast to treaties establishing reciprocal rights and obligations for state parties, human rights treaties should be

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107. See American Convention, supra note 2, arts. 8, 25.

108. Id. art. 29. Article 29 provides that the Convention may not be interpreted to allow the suppression of rights and freedoms granted in the Convention. Id. art. 29(a). The Convention may not be interpreted to restrict rights and freedoms granted by a state's laws, or by another convention, including the American Declaration of the Rights and Duties of Man; nor may the Convention be interpreted to preclude exercise of rights "inherent in the human personality or derived from representative democracy." Id. art. 29(b)-(d).

109. Id. art. 29(a) (specifying that interpretation of Convention may not restrict rights or freedoms granted in Convention to greater extent than provided for in Convention).

110. See Velázquez Rodríguez Case, supra note 2, para. 6, 28 I.L.M. at 331 (Piza Escalante, J., dissenting on issue of compensation) (explaining that while individual is precluded from bringing case to Court, this should not be interpreted to restrict victim's role as autonomous party in Court proceedings).

111. American Convention, supra note 2, art. 29(c).

112. Id. art. 29(d) (providing Convention is not to be interpreted to limit effects of American Declaration or other similar "international Acts").

113. American Declaration of the Rights and Duties of Man, art. 18 (1948), reprinted in Basic Documents, supra note 2, at 17, 21 (setting forth right to fair trial for every person).

114. See The Effect of Reservations on the Entry into Force of the American Convention on Human Rights arts. 74, 75), Advisory Opinion No. OC-2/82 of Sept. 24, 1982, INTER-AM. CT. H.R., Ser. A: Judgments and Opinions, No. 2 (1982). In this opinion the Court looked to the nature of the Inter-American Convention as "a multinational legal instrument or framework enabling States to make binding unilateral commitments not to violate human rights of individuals within their jurisdiction." Id. para. 33. The Court made its interpretative determination in light of that context, finding that the purpose of the instrument would be better served by an interpretation furthering its humanitarian aims. Id. para. 34.
interpreted in favor of individuals. The right of victims to choose their lawyers is an expression of such an interpretation.

While the new Rules of Procedure fall short of explicitly stating the right of victims to direct representation, the Rules allow the Court to appoint victims' lawyers as advisors if the Commission does not. In fact, denial of such representation would be a violation of the Convention itself. Article 22(c) of the Rules suggests the need for the Commission always to appoint the victims' lawyers as members of its defense team. Consequently, if the Commission fails to make such an appointment, the Court could authorize it. It would also violate article 24 if the Court rejected a request in a grave case for provisional measures requested by a victim. Rejection of evidence put forward by the victims' lawyers and failure to take into account the victims' views on proper remedies would also violate the Court's obligation to recognize the humanitarian purposes of the Convention. This interpretation of the Rules of Procedure is justified because they must be consistent with the Convention, which only excludes victims from directly bringing a case to the Court.

B. Modification of the Court Rules

Another option is for the Court to modify its Rules of Procedure to allow direct representation—following the European model. This option would have the advantage of avoiding any dispute concerning the right to direct representation. Lack of modification, however, should not be construed as a denial of the right to direct representation, because such a denial would be a violation of the Convention itself.

V. CONCLUSION

After the Honduran experiences, the Court is again considering contentious cases, which signals a promising development in the strengthening of the Inter-American system. There are three new cases before the

115. See id. at para. 29. The Court distinguished the American Convention from the more traditional "reciprocal exchange of rights for the mutual benefit" of states, finding that human rights treaties have as their object the submission of states to "a legal order within which they, for the common good, assume various obligations, not in relation to other states, but towards all individuals within their jurisdiction." Id. (examining in support recognition of distinction in nature of human rights treaties from other types of treaties by European Commission on Human Rights in Austria v. Italy, 1961 Y.B. Eur. Conv. on H.R. 116, 138, 140 (Eur. Comm'n on H.R.)).

116. American Convention, supra note 2, art. 22(2).

117. Id. art. 24.

118. See supra notes 67, 76 (addressing change in European Court of Human Rights practice to allow direct representation).
Inter-American Court, two against Suriname and the other against Peru.\textsuperscript{119} The Court's involvement could contribute greatly to the Inter-American system of protecting human rights. Application of the American Convention by a tribunal, and not just by political or quasi-judicial bodies, will advance the rule of law. Recognition of the rights of individuals to act on their own behalf before the Court by choosing their own counsel significantly ensures this development.

The \textit{Velásquez} case contributed to the evolution of human rights norms by exposing and delegitimizing the inhumane practice of disappearances. The case also demonstrated that individuals not willing to accept disappearances should be entitled to bring their claims to international organs. The Court and the Commission should continue to strengthen the system by recognizing the right of individuals to direct representation. This is consistent not only with the goal of the system to protect human rights but also with the victims' own just expectations.

\textsuperscript{119} There are two cases against the Government of Suriname pending before the Inter-American Court of Human Rights. Case 10.274, Asok Gangarom Panday Case; Case 10.150, Aleoboetoe y Otros Case. The case against Peru is known as the \textit{El Fronon} case. Case 10.070. The petition against Peru was filed on May 10, 1990, alleging assaults against journalists Hugo Bustios Saavedra and Eduardo Rojas Arce following threats from military personnel. Bustios Saavedra was killed, and Rojas Arce was injured. The author is a legal advisor to the Commission on behalf of the victims in the Surinam cases.