

1997

Field Report: The Contentious Jurisdiction Mechanism of the Inter-American Human Rights System: Looking Toward the Future

Lawrence Groo

Follow this and additional works at: <https://digitalcommons.wcl.american.edu/hrbrief>



Part of the [Human Rights Law Commons](#), and the [International Law Commons](#)

Recommended Citation

Groo, Lawrence. "Field Report: The Contentious Jurisdiction Mechanism of the Inter-American Human Rights System: Looking Toward the Future." Human Rights Brief 4, no. 2 (1997): 2-3, 23.

This Article is brought to you for free and open access by the Washington College of Law Journals & Law Reviews at Digital Commons @ American University Washington College of Law. It has been accepted for inclusion in Human Rights Brief by an authorized editor of Digital Commons @ American University Washington College of Law. For more information, please contact kclay@wcl.american.edu.

FIELD REPORT

The Contentious Jurisdiction Mechanism of the Inter-American Human Rights System: Looking Toward the Future

By Lawrence Groo

As demonstrated at the recent seminar, "The Inter-American System for the Promotion and Protection of Human Rights," held at the Organization of American States (OAS) headquarters in Washington, D.C. in December 1996, there has been growing support over the last few years for strengthening and refining human rights protections in the hemisphere through the Inter-American System. Once renowned for rampant human

Once renowned for rampant human rights abuses and authoritarian governments, the region is now witnessing a burgeoning of democratic reforms and economic growth.

rights abuses and authoritarian governments, the region is now witnessing a burgeoning of democratic reforms and economic growth. At the 1994 Summit of the Americas, regional leaders pledged to bolster the Inter-American Human Rights System, and the current Secretary General of the OAS, former President of Colombia, César Trujillo Gaviria, has made the promotion of human rights one of his chief priorities. Within this context, the evolving role of the contentious jurisdiction mechanism of the Inter-American Court of Human Rights (the Court) in promoting and protecting hemispheric human rights is of great importance.

Contentious jurisdiction represents the last line of defense against human rights abuses in the region. Once a state has ratified the American Convention on Human Rights (the Convention), it

has the option to accept the contentious jurisdiction of the Court. Contentious jurisdiction applies to disputes over whether the rights guaranteed by the Convention have been violated. Only a State Party or the Inter-American Commission on Human Rights (the Commission) has the capacity to invoke the Court's jurisdiction. Individuals therefore have no standing to bring cases, and there is no direct victim representation before the court.

As the next millennium approaches, the Court's contentious jurisdiction mechanism is adjusting to an expanding docket and, as a consequence of the recent hemispheric spread of democracy, an enhanced profile within the Inter-American System. In order for the

Contentious jurisdiction represents the last line of defense against human rights abuses in the region.

The Human Rights Brief is a publication of the Center for Human Rights and Humanitarian Law in conjunction with the Washington College of Law at American University. No portion of this newsletter may be reprinted without the express written permission of *The Human Rights Brief*. All correspondence, reprinting requests, and articles proposed for publication may be sent to: *The Human Rights Brief*, Center for Human Rights and Humanitarian Law, Washington College of Law, American University, 4801 Massachusetts Avenue, NW, Washington, DC 20016. Ph. (202) 274-4180. Fax (202) 274-4130. E-mail: HUMRLAW@AMERICAN.EDU. Internet: <http://www.wcl.american.edu/pub/humright/home.htm>. © Copyright 1997.

Directors of the Center For Human Rights and Humanitarian Law

Robert Goldman Claudio Grossman Herman Schwartz

Executive Director Robert Guitteau, Jr.

Editor-in-Chief D. Michelle Domke

Senior Articles Editors Gillian Brady
David Clark

Managing Editor Chandini Burt

Junior Articles Editors Patrick Moran
Rajeev Purohit
Amy Stern

Point/Counterpoint Editors Nicole Clarke
J. Michael Springmann

Field Reports Editors Monika Talwar
Jamie Underwood

Trends Editors Gary Rabkin
Alexandra Wisotsky

Center News Editor Minh Ngoc Nguyen

Faculty/Alumni News Editor Aimee Meacham

Inter-American System Editor William Clark Harrell

International Tribunals Editor Ewen Allison

Alumni Board Vanessa Allen, Gabriel Eckstein, Fernando González-Martín, Claudia Martín, Rochus Pronk, Ayesha Qayyum, Diego Rodríguez, Brian Tittemore

Newsletter Staff Kim Anglin, Madhavi Basnet, Nicole Grimm, Marie Hurlbut, Jennifer Morris, Maha Munayer, Sarah Paoletti, Christine Poulon



An equal opportunity/affirmative action university.
printed on recycled paper



Court to meet the increased demand brought about by democratic reforms and the rule of law, its contentious case mechanism must be refined further.

The need to strengthen the Court's contentious jurisdiction is substantiated by the likelihood that additional Member States soon may ratify the Convention and/or accept the Court's compulsory jurisdiction in contentious cases. Moreover, as the experience of the European Court of Human Rights demonstrates, there is likely to be an even greater demand for the Inter-American Human Rights System's adjudicatory and non-adjudicatory functions as the rule of law and respect for human rights takes hold in the region.

The Court's contentious jurisdiction is exercised in accordance with the Convention, the Court's Rules of Procedure, and the Court's Statute. Pursuant to these instruments, the Court is granted the authority to receive and hear cases, administer legally binding judgments to States Parties, and where

continued on next page

OAS, continued from previous page

appropriate, adopt provisional or remedial measures. The Court may adopt provisional measures in cases of extreme gravity or urgency or may order remedial measures when it finds that the victim (or the victim's family) should be compensated for the injuries sustained.

The Court's contentious case mechanism has proven to be an invaluable addition to hemispheric human rights protections. In addition to potentially deterring further human rights abuses, the Court's decisions in several contentious cases have addressed a number of challenging areas, such as the nature and illegality of forced disappearances, and made important statements on the Commission's position vis à vis the Court. With more cases now being referred to it by the Commission, the Court will likely broaden its contentious case jurisprudence even further in the near future.

In practice however, the Court's contentious case mechanism has exhibited several procedural and structural weaknesses that impair its institutional effectiveness, notwithstanding the best efforts of a financially strapped and understaffed Court and Commission. In addition, some critics charge that these weaknesses impede the petitioner's right of due process afforded by Articles 8 and 25 of the Convention.

The greatest difficulty facing the Court's contentious jurisdiction mechanism is the relatively infrequent exercise of its authority. In the first ten years of its existence, the Court heard only

Some critics charge that procedural and structural weaknesses impede the petitioner's right of due process.

two contentious cases, one of which was dismissed on procedural grounds. While the Court is now hearing more cases, the paucity of contentious case jurisprudence and experience is still marked. The problem is complicated by the fact that the Commission, which is essentially the gatekeeper of the System's contentious jurisdiction, has little guidance in deciding when to refer a case to the Court. Neither the Convention, the Commission's Regulations,

nor any other of the Inter-American System's legal instruments provides guidelines for the referral of cases. The Court also has failed to delineate a standard for referral, despite addressing the issue on two occasions, making treatment of cases inconsistent and unpredictable.

The contentious jurisdiction mechanism of the Inter-American System also has suffered from procedural redundancies, the most important being the duplication of fact-finding. According to existing procedures, the Court must perform its own fact-finding and inves-



The following countries are parties to the American Convention on Human Rights: Argentina, Barbados, Bolivia, Brazil, Chile, Colombia, Costa Rica, Dominica, Dominican Republic, Ecuador, El Salvador, Grenada, Guatemala, Haiti, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, Suriname, Trinidad y Tobago, Uruguay, and Venezuela.

tigative research, even though much of its fact-finding in contentious cases mirrors the Commission's proceedings in earlier deliberations. These duplications make proceedings more expensive, and, considering that the Court typically meets for less than one month a year, waste precious time.

The greatest difficulty facing the Court's contentious jurisdiction mechanism is the relatively infrequent exercise of its authority.

Contentious case proceedings are complicated further by the potentially conflicting roles assumed by the Commission before the Court. Acting as both the petitioner's advocate and the System's *ministerio publico* (impartial adjudicator), the Commission has had to juggle both the victim's best interests and the interests of the System as a whole. The duality of the Commission's position potentially subjugates the latter to the former, and is contrary to the original intent of the System's designers, who intended for the Commission to serve as *ministerio publico*. The lack of direct victim representation before the Court has been cited by a number of legal scholars as being one of the principal deficiencies of the current structure of the Inter-American contentious case mechanism.

The enforceability of its contentious case decisions is a fundamental prerequisite of any effective judicial system. In the Inter-American System, enforcement of the Court's decisions is provided for under Article 65 of the Convention, which stipulates that the Court should note instances of non-compliance in its annual report to the General Assembly (the Assembly). In practice, the Court has not always mentioned these instances in its annual report, and even when it has, the Assem-

The enforceability of its contentious case decisions is a fundamental prerequisite of any effective judicial system.

bly has shown that it will not always act commensurately. In 1994, when the Court submitted an annual report that mentioned a situation of non-compliance by Suriname, the Assembly failed to act. In 1995, the Court again mentioned the non-compliance of Suriname, and the Assembly responded with

continued on page 23

Alumnus Profile, continued from page 15

UN, the U.S. State Department, the U.S. Congress, and members of the press. Finally, she spent a month monitoring human rights conditions in a Kivu refugee camp, which she describes as one of the most difficult but important experiences of her life.

Roth's current position with MINUGUA represents her first field experience in Latin America. In her position as Legal Advisor, one of her primary duties is to receive and verify complaints about human rights violations. She does this by speaking to Guatemalan citizens and traveling

throughout her assigned region of Petén to visit the sites of alleged violations. She also monitors the response of the administration of justice to human rights complaints by speaking to the officials in charge of human rights investigations. Roth believes that the Guatemalan government and military are beginning to show more respect for human rights, but problems of impunity, arbitrary detentions, and the inadequate administration of justice still remain. MINUGUA's most recent report reflects this view and comments specifically that members of the mili-

tary no longer perpetrate the massive human rights violations that were once widespread. Roth feels that MINUGUA has played an important role in Guatemala by breaking the wall of silence that once surrounded human rights violations. By accepting and monitoring complaints, MINUGUA allows people to come forward and report abuses that would previously have remained invisible. Roth is enthusiastic about working in Guatemala and enjoys its excitement and diversity. She plans to remain in Latin America for the foreseeable future. ☉

OAS, continued from page 3

a resolution which urged the Government of Suriname to "report to the Inter-American Court of Human Rights on the status of compliance with the Court's judgements."

By avoiding the possibility of competing roles before the Court in contentious cases, the Commission could assume a more neutral position in contentious case proceedings.

There are a variety of proposals, originating from both inside and outside the System, that seek to address the perceived weaknesses in the Inter-American contentious jurisdiction mechanism. Regarding the enforceability of the Court's judgements, a closer link between the OAS's political bodies and the Court is often cited as highlighting the latter's work, while giving enforcement concerns more legitimacy within the System itself. In order to increase the number of cases referred to the Court and establish a more reliable referral procedure, numerous authorities have suggested adopting a concrete referral procedure, perhaps by updating the Commission's Regulations, that would be applied to every case before the Commission.

Additionally, the Commission could request an advisory opinion from the

Court in order to gain its views on the subject and promote greater institutional cooperation. By avoiding the possibility of competing roles before the Court in contentious cases, the Commission could assume a more neutral position in contentious case proceedings. As some scholars have previously suggested, the Court could follow the practice of the European Court of Human Rights, and allow the victim direct legal representation before the Court.

These are but a few possibilities that would address the current weaknesses of the System's contentious jurisdiction. It should be noted that almost all of these proposals — the enforceability of the Court's decisions, the role of the Commission in contentious case proceedings, and the referral capacity of the Commission — while ambitious in scope, require reinterpretations of existing

These proposals require reinterpretations of existing policies and of the current framework, rather than the politically challenging task of amending the Convention.

policies and of the current framework, rather than the politically challenging task of amending the Convention.

These examples are some of the most salient aspects of the Inter-American contentious jurisdiction mechanism that

have proven, through practice and public scrutiny, to be in need of improvement or refinement. There are, however, other aspects of the Inter-American System's contentious jurisdiction mechanism that critics and scholars have cited as needing reform. Often mentioned subjects include: (1) the Court's geographical separation from the other elements of the Inter-American System; (2) the drawbacks of a part-time Court; and (3) the lack of individual access to the Court's contentious jurisdiction. In order for the Court's contentious jurisdiction to be as effective as possible, these other areas should, in time, be addressed as well. ☉

On November 26, 1996, the Inter-American Commission on Human Rights released a report called *Toward a New Vision of the Inter-American Human Rights System*, (distributed by the Office of the Secretary General and currently under consideration in the Political-Judicial Committee of the OAS) which examines the mechanisms of the Inter-American Human Rights System in detail and proposes needed reforms. Further information about this report may be obtained by contacting the Commission in Washington, D.C. at (202) 458-6002.