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The Future of the Inter-American Human Rights System

by David J. Padilla*

The principal problem facing the Inter-American Human Rights System is that we have been too successful. Since 1990, the Commission's published product has increased five-fold. Last year, the Commission held six weeks of regular meetings and conducted seven on-site visits and three non-investigatory visits to member states. Commission members and staff lawyers made nine appearances before the Inter-American Court of Human Rights. In addition, Commission members took depositions at

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headquarters and abroad, met with UN and observer government officials, conducted anniversary ceremonies and attended academic events throughout the Americas.

These successes have generated renewed demand and heightened expectations, increasing pressure on the Commission and Court's scarcest resource — their time. Contributing to this increase is the fact that, in many countries, local bar associations have learned to use the System as the framers of the American Convention on Human Rights intended. Thus, the Commission is pursuing an unprecedented number of complex friendly

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settlement negotiations and litigating more contentious cases against member governments of the Organization of American States (OAS). The Com-

mission is also pursuing more requests for precautionary measures, that is, requests that special protection be accorded to persons whose human rights are in imminent danger of being violated irremediably. The Court's work has increased proportionally.

My fear, however, is that the Inter-American System is approaching a



David Padilla

Photo courtesy of David Padilla

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point of saturation, and perhaps of diminishing returns. For example, during the 1995 winter period of sessions, thirteen working days in total, literally half of the Commission's time was consumed in hearings. The Commission did not have sufficient time to ade-

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quately deliberate on those hearings and evaluate the myriad of requests, recommendations, petitions and motions before it. During the same meeting the Commission adopted a 400 page annual report, a 100 page

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country report, and several individual case reports, in addition to its other vital, ordinary tasks. Unfortunately, because of a lack of time, consideration of a number of draft individual case reports and a country report was postponed, and an extra meeting was

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scheduled for the following month. Due to the number of pending items, however, the agenda of the extra meeting also was not fully accomplished.

In response to these demands, the Commission has appointed country and thematic rapporteurs and utilized advanced communications technology, such as conference calls, electronic transfers of texts, faxes, electronic mail and voice mail, in performing its duties. The OAS has also taken measures to aid the Commission. There is a new administration in the General Secretariat, and Secretary General Cesar Gaviria allocated an additional \$300,000 for the Commission's 1995 budget. New staff posts are being advertised. The Commission has also made interim appointments and entered into new consultancy contracts.

Additional steps are needed, however. First, and most importantly, the Commission and Court must become full-time bodies composed of persons dedicated exclusively to human rights business. Currently, the Court and Commission meet twice a year, with each session lasting two fortnights. A few extra days are added on to each session for hearings. This mode of operation does not satisfy the demands and expectations of the OAS member governments, NGOs and victims. Alternatives to a full-time Commission and Court, such as adding a third one-week-long session, revising the rules of procedure of the Permanent Council or the General Assembly, or investing more in the Secretariat would not overcome the problems described in this article, since all final decisions must be taken by the Commission and Court and not by the respective secretariats.

In addition, the feasibility of increasing the number or length of meetings is limited by the Commission members' prior commitments to their individual careers.

Secondly, employees of any branch of government should be disqualified from serving on the Commission and Court. Although Members and Judges on the whole have been remarkably independent of government influence, it is unseemly for them to be working for governments whose conduct may be the subject of their consideration. I recognize that, at present, governments wishing to nominate candidates for election to these bodies face a dilemma. They can offer retirees who have free time and independence but sometimes lack the stamina to perform some of the more demanding tasks faced by the Commission members, such as on-site visits. They can nominate younger candidates who are academicians and generally enjoy greater scheduling flexibility than practicing lawyers but who often lack the diplomatic experience so useful for this type

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of work. Or they can offer government officials who will be granted the leave time necessary to engage in the whole range of Commission and Court activities. My first recommendation of a full-time Commission and Court would eliminate this difficulty.

I submit that the Commission and Court must move away from their status as part time bodies, and devote themselves full-time to what are full-time challenges. 🌐

**David Padilla has been Assistant Executive Secretary for the Inter-American Commission on Human Rights since 1980. In this capacity, he participates in monitoring human rights conditions in the OAS member-states and helps manage the legal staff. Padilla is also Adjunct Professor of Law at WCL, where he teaches international human rights law. The views expressed in this article are the author's own.*

HAITI REPORT AVAILABLE

The Center for Human Rights and Humanitarian Law has developed an analysis of human rights obligations established in the Haitian Constitution and international human rights treaties ratified by Haiti. The paper, prepared in anticipation of a human rights training program for the newly elected Parliament of Haiti, also addresses human rights concerns in the Haitian context, including: freedom from torture, personal liberty, due process of law, effective remedy, participation in government, equality, State responsibility during states of emergency, and amnesty laws. In addition, the paper suggests constitutional amendments and new legislation to bring domestic law into compliance with international obligations.

This paper, the result of a USAID grant received by the Parliamentary Human Rights Foundation, is available at a cost of \$5.00 (22 pages). For further information, please contact the Center for Human Rights and Humanitarian Law.

