



## **Environmental Advocacy and the Inter-American Human Rights System**

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*This is a working document in first draft version.  
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## **I. Introduction**

What follows is a guideline targeted to environmental and human rights advocates, to use existing and experimented international human rights instruments for the defense of the environment. The guide is intended primarily for legal advocates, since the mechanisms described herein are legal human rights institutions of the American hemisphere, although channels for non-legal advocacy may also be possible and are also described in this guideline.

This guideline should be useful to both environmental and human rights advocates, although it is primarily an introduction for the former to the Inter-American Human Rights System. Human Rights advocates, however, can gain important insight into environmental issues that can, and should be considered in human rights litigation.

Fore mostly, it is essential to introduce and define the intricate relationship that exists between human rights and the environment. Although this relationship may seem obvious to many, it is not so obvious in the world of litigation and advocacy, and in fact it is often overlooked or ignored. The similarities, overlap, and complementarity of human rights issues to the environment (and *vice versa*) remain largely ignored by most human rights and environmental advocates. This paper is an attempt to encourage environmental advocates to familiarize themselves with human rights mechanisms, and to consider expanding environmental protection into international human rights litigation mechanisms. As we discover the nature and dynamics of the relationship between these areas of international law, we recognize the fit of human rights instruments for the defense of the environment. This guideline is also a first step for human rights advocates to expand their traditional approach of the defense of basic political and civil human rights to include economic, social and cultural rights, or in this case, specifically environmental rights. Other materials and resources are available which focus more on the legal fundamentals linking human rights and the environment.<sup>2</sup>

The idea of developing a guideline or tool for environmental advocates to use human rights instruments follows the growing tendency of organizations and individual advocates to experiment with the bridging of the human rights and environmental fields.<sup>3</sup> Since end 1999 several precedent-setting non-partisan case briefs (*amicus curiae*) presented before the Inter-American Court on Human Rights (in Costa Rica) and at the Inter-American Commission on Human Rights (in Washington, DC) have successfully influenced the Court and Commission to consider the link between environmental

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<sup>2</sup> See Linking Human Rights and Environment. Romina Picolotti and Jorge Daniel Taillant (Eds). Forthcoming. CEDHA 2001.

<sup>3</sup> See CIEL ([www.ciel.org](http://www.ciel.org)), CEDHA ([www.cedha.org.ar](http://www.cedha.org.ar))

degradation and the violation of human rights. Much research is also in progress on the linkages between human rights and the environment around the world. Inspired by such rulings, interpretations, and research, a new horizon appears for human rights and environmental advocates. While we are not advocating for an abrupt change of direction for human rights advocacy, or even offering a international legal panacea for environmental advocates, we do suggest that there is virgin international and even national grounds to expand our horizons, and deepen our analysis, both from the angle of environmental and human rights protection.

## **II. Background on Human Rights, Environment and International Law**

### **A. Institutional Legal Structures**

One of the principal hindrances environmentalists face with respect to international environmental advocacy is the lack of international legal structures available in which to litigate in favor of victims of environmental degradation. “Legislating the environment” at an international level is a relatively new concept (the Rio Summit, for example, is a fairly recent move in this direction). The Stockholm Declaration of 1972 was a fundamental first step to attain this objective. Environmental legislation, however, remains largely a “national” issue, confined or limited to national laws and regulations, and oftentimes limited to select ministerial-level regulations. Even within nations, the environment, and environmental legislation, operates at the margins of the application of local law and custom. Attorneys, judges, law professors, and other legal actors, simply ignore environmental legislation, or don’t have it on their radar screen. International environmental law has not succeeded in recognizing individuals as subject of international law, leaving the victim of environmental abuses defenseless at the international level.

This is not the case for human rights law. Human rights *have* seen substantial legal attention from local and international bodies, especially in the last several decades. The international human rights arena developed this century in large part as a response to unsustainable severe physical and psychological abuses against individuals of dictatorial regimes. Several international systems now address human rights, including the European and Inter-American Human Rights Systems. These systems have developed institutional instruments useful to defend human rights and have been largely successful in their effort to protect and promote the respect for human rights in the national and international arena. In many cases, national governments have adopted international law as national law, and even placed international law above national law, and have devoted important institutional resources to the protection and promotion of human rights. Through international jurisprudence, treaties, and declarations, human rights legislation has surfaced in many national arenas. One of the most important successes of international human rights law is that it has given victims direct access to international human rights fora. Thus in international human rights law, *individuals* are subject of law and can legally claim against human rights abuses perpetrated by states.

Yet from an environmentalist standpoint, the approach in the defense of human rights with respect to the environment has been somewhat limited in scope. Although the treaties and declarations enumerating our human rights have a clear and expansive definition of human rights, the actual defense of human rights in this century has focused primarily on a select portion of these rights, namely, civil and political rights. This is largely due to the response and focus of the international community to the particular types of violations present in our societies. Human rights advocates in the past decades rightfully opposed dictatorial abuses of human rights, bringing cases of disappearances, torture, and murder before the courts, centering legal argumentation on the rights related to these violations in particular. Few if any cases, center on social, cultural or economic rights, and fewer if any, on environmental matters.

What is interesting, nevertheless, from an environmental advocate's perspective, and also for human rights advocates willing to expand their focus, is that there is an experimented trajectory of international jurisprudence, and cases of individuals litigating against nation states for rights violations. This trajectory can give us some indication of how international claims by individuals may fare for environmental issues. International human rights systems offer a unique forum for individuals to litigate to defend against violations of their rights, including rights that relate to the environment.

This paper will focus specifically on the Inter-American Human Rights System (IAHRS or "system"), and the potential of this system to serve as a forum for environmental advocacy. The intention is to highlight areas where the system has been effective, where precedent-setting jurisprudence has paved the road for future advocacy, and where there may be inroads to further defend and promote environmental protection. It is important to understand that the IAHRS is not merely a receptor of cases. In fact, although many cases were admitted at the Commission level, as we will see in the subsequent section, very few cases have actually been forwarded to the Court, and even fewer decided. Yet this is not a story solely about litigation. This story is also about lobbying for better laws and better monitoring of existing circumstances. It is about civil society acting as an actor and providing international institutions with valuable information and research about human rights and about the nature of human rights violations in the American hemisphere. The IAHRS offers several pressure mechanisms to encourage States to defend and promote a healthier environment and more sustainable development. The IAHRS is a recognized and visible discussion forum, offering civil society a forum and inroad to pressure and encourage States to respect human rights or face international repercussions.

## **B. Linking Human Rights and the Environment**

One of the first issues we must address in the rapprochement of human rights and the environment is to better understand the fundamental overlaps that exist between our human rights and the environment.

In his 1974 Hague Academy lecture, Nobel Prize winner René Cassin advocated that existing concepts of human rights protection should be extended in order to include the

right to a healthful and decent environment.<sup>4</sup> Today more than ever, society is awakening to the linkages between our environment and human life. We are realizing that the anthropogenic destruction of our planet's sustainable biodiversity also negatively impacts humanity, placing human life at great risk. Human dependence on environmental quality is becoming so evident that it will surely be treated as a dimension of human rights.<sup>5</sup> In the words of Earthrights International, "without a habitable environment, all other human rights become either unattainable or meaningless".<sup>6</sup>

We easily make the connection between environmental degradation and the resulting severe threat to our basic *human right to life*. We are frightfully witnessing the destruction, contamination or elimination of many of the world's most significant natural resources. The exploitation of our forested lands are eliminating the oxygen supply, disturbing ecological bio systems, and intruding into the lives of peoples and cultures. The ozone layer is slowly depleted by the uncontrolled production of harmful emissions. Swamplands created by dam construction in numerous continents have created massive climatic changes and extinguished species. Meanwhile, the inhabitants of flooded valleys are faced with irreparable social, cultural and economic damage, including not only a forced change of habitat, but also a drastic change of lifestyles and customs. The loss of non-forested habitat is also of great concern to humanity, disturbing the natural feeding chain of wildlife, and affecting local communities who live off of the natural resources offered by their lands. Areas once known for their pristine lakes and rivers providing drinking and recreational water to millions of people, face dangerous contamination by industry resulting in unsanitary living conditions for large portions of the population. Air and noise pollution from densely populated urban centers result in severe health problems for urban dwellers. This sort of irrational use and overexploitation of environmental resources directly affecting the quality of life of human beings continues at an alarming rate.

The linkages between environmental degradation and human rights violations are of even greater relevance when one considers that the victims of environmental degradation tend to belong to the more vulnerable sectors of society (racial and ethnic minorities or the poor), who regularly have their human rights disproportionately abused. Former President Clinton noted in October 1992, that it is no accident that in those countries where the environment has been most devastated, human suffering is the most severe.<sup>7</sup> Yet in the development of international human rights and environmental jurisprudence, and in the way we choose to defend and promote environmental sustainability and human rights, this view has yet to find ways to make this logical union. International jurisprudence, local and international organizations, governments, and other concerned actors continue

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<sup>4</sup> Initial sentence from Paul Gormley's *Human Rights and Environment: The need for International Cooperation*. Sijthoff/Leyden 1976.

<sup>5</sup> Richard Falk, *Human Rights and State Sovereignty* 167 (1981), quoted in Michael Kane, *The Yale Journal of International Law*. Winter 1993. Volume 18. Number 1.

<sup>6</sup> Earthrights International. *Human Rights and Environment: Presented to the Centre for Human Rights, United Nations Office in Geneva*, January 1997.

<sup>7</sup> William Clinton 1992, quoted in Michael Kane, *The Yale Journal of International Law*. Winter 1993. Volume 18. Number 1.

to address the environment and human rights from separate institutional, thematic and legal perspectives.

Most of our basic human rights are affected by environmental degradation. Some examples are: **the right to health**, affected by environmental abuse, such as water, air, and noise contamination; **the right to property** often violated by commercial exploitation (a recurrent example is the intrusion of commercial ventures into indigenous lands for the extraction of natural resources); the value of our property is also affected by environmental pollution; **the right to equality** is greatly affected by the unequal burden shared by certain sectors of society which are the targets of environmental contamination. Toxic dumps systematically appear where certain sectors of the population are less able to defend themselves or to protest against such abuses, resulting in *environmental discrimination*<sup>8</sup>, **the right to participate** is a basic premise of democratic societies, understood as the individual's right to participate in decisions (investment decisions, urban planning decisions, commercial policy) which directly or indirectly affect our habitat; undoubtedly, few communities participate in the decisions which bring about severe environmental contamination to their areas.

Gromley, in 1976 argued that the right to a pure, healthful, or decent environment is essentially a human right ... and that there is validity to the proposition that preservation of the ecology and environment is included within the scope of the inalienable rights of man. Gromley goes on to argue that at a philosophical level, the right to a pure and clean environment falls within the scope of the right to a mere physical existence, and that the exhaustion of the earth's resources, [is a] major threat to man's continued existence on this planet.<sup>9</sup>

Yet the laws governing our human rights and those governing the regulation and control of the environment rarely converge. International as well as national jurisprudence addressing the environment and human rights, has focused on these legal arenas through separate frameworks, separating inextricably linked issues, even though the linkages between environmental abuses and human rights abuses are unarguably evident. By maintaining this rift between the areas, we duplicate efforts, thin available resources, and miss the opportunity to potentate and leverage our actions. Society, and particularly the actors which are behind the efforts to promote environmental awareness and legislation and those that are devoted to defending human rights, need to recognize the inextricable nature of these fields; and understand that we cannot think of the environment as somehow removed from our human condition. Everything and anything that influences the environment, directly influences our human condition, and a violation of the environment is a violation of our human rights.

Each group of advocates (environmental and human rights advocates) has developed resources and strategies catered to defend their specifically defined and prioritized issues. Human rights advocates and institutions, have chosen a path specifically focused on

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<sup>8</sup> See Jorge Daniel Taillant. Environmental Discrimination: Issues and Themes: CEDHA 2000.

<sup>9</sup> Paul Gormley. Human Rights and Environment: The need for International Cooperation. Sijthoff/Leyden 1976. pp. 41-42.



political and civil rights, primarily on the protection against the types of human rights abuses perpetrated by dictatorial governments, abusive police and military forces, and limited political expression. Environmental advocates, meanwhile, have chosen to defend against the irrational and unsustainable exploitation of natural resources often ignoring the human element contained therein.

In their respective strategies and instruments to address abuses, human rights advocates have focused on international institutions, aiming to “force” governments to comply with such laws through the treaties and declarations to which they adhere. Environmentalists have focused more on publicity campaigns (a perfect example is the worldwide and largely visible campaigns by Greenpeace), using public opinion to leverage protection, and national regulations to enforce compliance with commonly accepted norms on environmental protection. Only recently has there been a significant international effort to develop international legislation to regulate the environmental arena. Yet neither group has addressed the links between the environment and peoples. Few have attempted to use the resources of one set of advocates to advocate for the other, despite the naturally complimentary nature and frequent overlap of environmental issues and human rights issues.

Boyle and Anderson 1996, in an important contribution to environment and human rights literature, suggest that the late twentieth century has witnessed an unprecedented increase in legal human right and environmental claims, and that historians will look back on the last quarter of the 20<sup>th</sup> century as the period in which both environmental law and human rights reached a kind of maturity and omnipresence.<sup>10</sup> Their rapprochement is imminent.

The failure to construct this bridge is a result of the lack of communication between these actors, and the parallel paths that they have paved for themselves. The human rights advocacy community simply does not communicate with their environmental counterpart, and the same is true in the other direction. More exchange is needed between the actors of each in order that their available advocacy resources be useful to one another.

In large part, this rapprochement will evolve and gain momentum when our society finally concludes that our human rights include a right to a healthy and sustainable environment. It has already been legislated.<sup>11</sup> We know it implicitly, or at least sense it; we now need to abide by it explicitly. This guideline is a single effort in a series attempting to begin to pave this road.

### **III. What is the Inter-American Human Rights System?**

#### **A. History**

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<sup>10</sup> Boyle and Anderson. *Human Rights Approaches to Environmental Protection*. Oxford University Press. 1996

<sup>11</sup> see for example, the San Salvador Protocol Article 11 and the African Convention

### *Creation of the System*

The Inter-American Human Rights System (IAHRS) dates to 1948, the year the Organization of American States (OAS) was founded, and the year of the proclamation of the American Declaration of the Rights and Duties of Man.<sup>12</sup> The Inter-American Commission on Human Rights (henceforth “the Commission”) was created before the Court on Human Rights, in 1959 in order to further respect for human rights in the American Hemisphere and is governed by the American Convention on Human Rights which was signed in 1969 and came into force in 1978. The Statute and the Regulations of the Commission, detailing its faculties and procedures, were approved in 1979 and 1987, respectively.<sup>1314</sup>

In 1969, the Inter-American Specialized Conference on Human Rights, drawing upon the American Declaration, the European Convention on Human Rights, and the International Covenant of Civil and Political Rights, approved the American Convention on Human Rights (the Convention). Twenty five of the thirty five countries of the hemisphere have ratified the Convention and are legally committed to observing and protecting the rights it contains.<sup>15</sup> The Convention significantly strengthened human rights protection in the hemisphere by standardizing over two dozen rights within the Convention’s 82 Articles.<sup>16</sup> The Convention established a two-tiered, treaty-based structure (which includes the Inter-American Court on Human Rights, alongside the Commission) that has characterized the Inter-American system for the protection of human rights ever since.

The Inter-American Court on Human Rights, located in San José Costa Rica, in activity since 1979 was established by the Inter-American Convention, with 22 of the 31 Member States of the OAS recognizing its jurisdiction.<sup>17</sup> It is important to note that not all member states to date, accept jurisdiction of the Court.

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<sup>12</sup> Much of the historical information on the Inter-American Human Rights System in this section is largely adapted from, “Toward a New Vision of the Inter-American Human Rights System”. By César Gaviria, Secretary General of the Organization of American States, in *The Journal of Latin American Affairs – F/W* 1996.

<sup>13</sup> Human Rights: How to present a petition in the Inter-American System. Organization of American States.

<sup>14</sup> The Commission has a new Regulation which will govern its operations. This regulation will be in force as of 5/2001. It is already available on the OAS website at:

<http://www.cidh.org/Básicos/nuevoreglamento.htm>

<sup>15</sup> The ratifying states are: Argentina, Bolivia, Colombia, Costa Rica, Chile, Ecuador, Guatemala, Honduras, Nicaragua, Panama, Peru, Surinam, Trinidad and Tobago, Uruguay, and Venezuela.

<sup>16</sup> The protected rights of the Convention are: The right to juridical personality (to be recognized as a person before the law); the right to life; the right to humane treatment, including the right not to be subjected to cruel, inhuman, or degrading punishment or treatment; freedom from slavery; the right to personal liberty; the right to a fair trial by a competent tribunal; freedom from ex post facto laws; the right to compensation in the case of sentencing be a final judgment through a miscarriage of justice; the right to privacy; freedom of conscience and religion; freedom of thought and expression; the right to reply or to make a correction to inaccurate or offensive statements; the right of assembly; freedom of association; rights of the family; the right to a name; rights of the child; the right to nationality; the right to property; freedom of movement and residence; the right to participate in government; the right to equal protection of the law; the right to judicial protection against acts that violate fundamental rights.

<sup>17</sup> The countries that have accepted jurisdiction of the Court are: Argentina, Barbados, Bolivia, Brazil, Colombia, Costa Rica, Chile, Ecuador, El Salvador, Guatemala, Haiti, Honduras, Mexico, Nicaragua,

A very useful OAS publication exists in each of the four official languages (Spanish, English, French and Portuguese) uniting all of the Basic Documents pertaining to the Inter-American Human Rights System. This publication can be obtained by contacting the OAS or vía electronically at the OAS website.<sup>18</sup>

### *The American Convention*

The American Convention was strongly influenced by the European Convention on Human Rights as well as the American Declaration on Human Rights approved in 1948, and the International Covenant of Civil and Political Rights. However, the American Convention, of all international instruments, covers human rights more extensively. The State parties to the Convention agree to respect and ensure the free exercise of the rights enumerated in the Convention to all persons under their jurisdiction. In this context, governments of State parties have both positive and negative duties. States have the obligation not to violate the rights of persons, while at the same time they must adopt reasonable and necessary measures to guarantee the free exercise of the rights of the individual.<sup>19</sup>

The American Declaration also contains a complete list of the rights that States should observe and protect. Apart from most of those contemplated in the Convention, the American Declaration includes various social and economic rights. The Convention is different in this respect because it only provides that States are committed to adopting measures to achieve the recognition of cultural, social and economic rights. Nevertheless, the Convention establishes individual human rights in greater detail.<sup>20</sup>

While before the Convention, the Commission acted as the primary human rights organ in the Inter-American system, conducting studies from its inception and receiving individual petitions, under the Convention the Inter-American Court can dictate binding decisions on member States. Further, the Convention designates a dependent relationship between the Commission and Court, since a case cannot reach the Court without having first passed through and completed the duties of the Commission with respect to the case.

It is convenient at this point to distinguish how the system views the differences between a convention and a declaration, and to clarify how the OAS's principle human rights institutions treat each. A convention is an international treaty, which as such, once ratified by a State, is a source of obligations, and in the specific case of American States, becomes part of internal law. The respect for the Convention is clearly an obligation of the State party, and individuals may insist on compliance with its law before national and international tribunals.

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Panama, Paraguay, Peru, Republica Dominicana, Suriname, Trinidad and Tobago, Uruguay, and Venezuela.

<sup>18</sup> Basic Documents Pertaining to Human Rights in the Inter-American System. Published by the General Secretariat of the Organization of American States. <http://www.cidh.oas.org/basic.htm>

<sup>19</sup> See Buergenthal, Norris, and Shelton. *La Protección de los Derechos Humanos en las Américas*. (Instituto Interamericano de Derechos Humanos). 1990. pp. 41-42.

<sup>20</sup> See: *Human Rights: How to present a petition in the Inter-American System*. Organization of American States.

The American Declaration is *not* an international treaty, but rather, as its name suggests a “declaration” by the States party. This does not mean it is not obligatory. What is interesting in terms of the system, however, is that the Commission and Court on human rights have assigned obligations to the States based on the Declaration. In this respect, the system treats the Declaration with utmost importance, obliging member States to comply with its laws. The American Declaration has been incorporated indirectly via de Charter of the OAS, by means of Article 150, that calls for the Commission to protect the rights listed in the Declaration.<sup>21</sup>

### *The Commission*

The Commission, located in Washington, DC was created to promote the observance and defense of human rights and to serve as a consultative organ of the OAS. The Commission was intended as a working group chiefly concerned with conducting investigations into select human rights issues. The Commission’s appeal as a forum for individual cases quickly gained popularity and soon expanded its role.

The Commission’s Convention-based responsibilities are principally associated with its competence to receive, examine, report upon (in its annual report), and submit (to the Court) individual petitions.

Article 1 of the Commission’s Statute establishes it as an autonomous entity with the specific duty to promote the observance and protection of *human rights* in the hemisphere. *Human rights* in the system are understood as those rights set forth in the American Convention and the American Declaration of the Rights and Duties of Man.<sup>22</sup> In subsequent meeting of the OAS General Assembly, (Rio 1965 and Buenos Aires 1967) the Commission’s mandate was refined, establishing the Commission as a permanent organ of the OAS, and generally strengthening the constitutional basis for an Inter-American Human Rights System.

The Commission is composed of seven Commissioners, which are specifically recognized in the field of human rights, and work on a non-remunerated basis (except for the President of the Commission). The member States submit up to three candidates who may be nationals of the state proposing them or of any other member State of the Organization. The terms served are four years in length, and Commissioners may be reelected only once.

The Charter based functions of the Commission specifically include to<sup>23</sup>:

1. develop an awareness of human rights in the hemisphere;

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<sup>21</sup> The definitions of Convention and Declaration as well as the analysis of the system with respect to each is taken from an unpublished draft manual on the Inter-American Human Rights System prepared by CEJIL.

<sup>22</sup> The recently in force San Salvador Protocol has broadened the spectrum.

<sup>23</sup> See Articles 18 and 19 of the Statute of the Inter-American Commission.

2. make recommendations to governments on the adoption of progressive measures in favor of human rights in the framework of their legislation, constitutional provisions, and international commitments;
3. prepare country studies or reports focusing on human rights in member States;
4. request that member States report on matters of human rights;
5. respond to inquiries and provide advisory assistance to any member State on matters concerning human rights;
6. submit an annual report on the state of human rights in the hemisphere;
7. perform on site visits and investigations;
8. submit a program budget to the Secretary General
9. act on petitions and other communications
10. appear before the Inter-American Court of Human Rights in cases provided for in the Convention
11. request the Inter-American Court of Human Rights to take such provisional measures as it considers appropriate in serious and urgent cases which have not yet been submitted to it for consideration, whenever this becomes necessary to prevent irreparable injury to persons;
12. consult with the Court on the interpretation of the American Convention on Human Rights or of other treaties concerning the protection of human rights in the American States;
13. submit additional draft protocols to the American Convention on Human Rights to the General Assembly, in order to progressively include other rights and freedoms under the system of protection of the Convention;
14. submit to the General Assembly, through the Secretary General, proposed amendments to the American Convention on Human Rights.

The Commission meets for a period not exceeding eight weeks a year. Since the system's inception there has been a steady increase in the workload of the Commission. It typically receives over 500 petitions for cases a year, and in special circumstances, many more.

The Commission can make recommendations to States, publish its conclusions regarding specific cases of human rights violations, and in certain cases initiate legal action against a State on behalf of the victim before the Inter-American Court of Human Rights. The Commission's strength lies in its powers of persuasion and its freedom to publicize human rights abuses, since it cannot force member States to take any course of action.<sup>24</sup>

#### *The Court*

The Inter-American Court of Human Rights, seated in San José Costa Rica, is an autonomous judicial institution whose purpose is the application and interpretation of the American Convention on Human Rights.

The Court's Statute, adopted by the General Assembly in 1979, provides for both advisory and contentious jurisdiction. The latter applies only to State parties to the Convention. Advisory opinions, on the other hand, can involve member States not party

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<sup>24</sup> See: Human Rights: How to present a petition in the Inter-American System. Organization of American States.

to the Convention, as well as specialized bodies within the Inter-American system. This is important since not all States accept Court jurisdiction. In this manner, even if the State in question in a given case is not party to the Convention, the Court may publish recommendations favoring remedies to abusive situations, and may influence favorable on the case.

The Court comprises 7 judges nominated and chosen by the States party to the Convention. They must be nationals of an OAS member State, not necessarily party to the Convention. They serve 6-year terms, and can be reelected for one additional period.<sup>25</sup> Each State may nominate up to three candidates, nationals of the State that proposes them or of any other member State of the OAS. Six months prior to the expiration of a term of a judge, the Secretary General of the OAS addresses a written request to each State party to the Convention that it nominate its candidates within the next 90 days.

The Court received its first contentious case in 1986, and has received relatively few cases in its history. Some of the issues it has addressed have been notable for their complexity and novelty. Specifically, the Court has considered important questions concerning disappearances of persons, *habeas corpus*.

The Court meets in two regular sessions each year, one in each semester.

#### *Election of Commissioners and Judges*

We detain ourselves to examine the electoral process of the commissioners and Court judges since this is an area where civil society, and specifically environmental advocates can have an important lobbying function to ensure that the candidates to judge and commissioner are individuals favorable to a determined cause.

The election of the commissioners and judges of the Court and Commission is largely a political affair, in which member States negotiate positions and vote for their preferred candidate. States or groups of States generally lobby in favor of a given candidate several months prior to the voting that takes place at the General Assembly held yearly. Although the electoral process is formally an internal process, in practice, there is a strong lobby on behalf of civil society actors that can tilt the election in favor of one candidate or another. Additionally, and perhaps most importantly, this lobby has successfully impeded the election of individuals with highly questionable track records in the area of human rights. By the same token, if a candidate shows a questionable track record on environmental matters, this can be an influential factor flagged by interested parties (civil society), and proper lobby may ensue to block his/her election or reelection.

Commissioners are nominated on personal grounds and *do not* represent nominating States. The only risk that commissioners may be swayed by State positions is during reelection, when States may try to lobby for favorable treatment in exchange for reelection support. Commissioners may and oftentimes do, do their own lobbying. Lobbying between States may go as far as exchanging favors in other international

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<sup>25</sup> Convention articles 52-54.

organizations such as the UN, that is, you vote for my candidate to Commissioner, and I'll vote for your UN candidate, etc..

NGOs have a fundamental role to play in the election process. In practice, NGOs provide States with information on candidates, suggest candidates, lobby for or against certain individuals, and secure voting by pressuring their contacts within State parties. For environmental NGOs, the main concern is to be informed about upcoming vacancies, reelection possibilities, new candidates, and the "green" record of each of these. NGOs should encourage their State contacts in the system to secure the nomination of environmentally educated and sensitive candidates. Reelections are also an important moment to review the candidate's green track record during his/her term, and with such information, pressure to reconfirm or remove judges and commissioners that have shown to be favorable or not to environmental issues within the system. We must remember, however, that the primary quality that candidates must have to be likely candidates is above all, a strong background in human rights. Although we may lobby extensively for a strong environmental candidate, if he/she does not have a worthy human rights background, it is unlikely that the States will favor such a candidate. It is advisable that individuals and organizations attempting to lobby in favor of a given candidate stress the background of the candidate on issues that have been assigned significant importance by the human rights system, such as a strong background with indigenous communities, etc..

#### *The Permanent Council*

The Permanent Council (PC) is a political organ of the OAS, and is the main recurring forum for political discussion, raising issues of hemispheric concerns, and debate on actions to be taken by the OAS. The PC meets one or two times monthly, at OAS headquarters in Washington, DC, and is the stepping stone to the General Assembly (GA), which takes place once per year. The GA agenda is negotiated at the various PCs. Also, issues and actions to be taken, decided at the GA are generally planned and executed from the PC.

NGOs have observer status at the PC, regularly attend the sessions, and have fairly direct access to the member States representatives present. The PC is an essential forum for civil society organization to obtain information, debate issues with member State representatives, make contacts with such representatives, and define strategies with like-minded States to promote or lobby for specific actions or votes on issues. It is also an essential forum to gain insight on initiatives or actions of States that may work against environmental interests. The agenda of the PC may or may not be circulated to NGOs prior to meetings, and this will depend on the public nature of the content, or on the will of a certain member State to inform certain NGOs of upcoming agenda topics.

#### *The General Assembly*

The General Assembly (GA) takes place once a year in a different country each year. The GA is the culmination of the previous year's activity at which member States take account of the OAS's ongoing work program, achievements with respect to previous GA

commitments, and where voting takes place (such as for Judges and Commissioners). What is not defined or completed during PC sessions is finalized at the GA. Also, new commitments, initiatives, and program activities are usually presented, defined and agreed upon, and working groups may be formed to address specific issues at the GA. It is especially important for NGOs that are behind specific issues that are up for vote to be present at the GA and lobby States to vote in favor or against their issues of interest.

## **B. Legal Framework and Issues**

The following section briefly reviews some legal issues relevant to the IAHRs, which are intended to help environmental advocates orient themselves with respect to the system. We recall that this guideline essentially describes how to use the IAHRs to litigate in favor of issues with environmental relevance.

### *Victim Action vs. Class Action*

The IAHRs has been more flexible than European System on accepting complaints on behalf of victims. However, the Commission (which acts as a filter or first step to the Court: see below) has been reluctant to accept class action claims, stressing the need that there be an identified victim. This may be, although is not necessarily, a hindrance in cases involving entire communities (class action). Environmental abuses are often characterized by their spatial and temporal dimension. The spatial dimension affects an important area, while the temporal effect is not only relevant to the present but may also affect future generations. Environmental advocates litigating in these types of cases before the system should be aware of the difficulties and reluctance of the system to process cases without a specific identification of at least one victim or in favor of future generations (class action).

### *Individual Rights vs. Collective Rights*

Following its insistence on the identification of specific victims, the Commission interprets the Rights of the American Convention as individual, not collective, save for right to free expression. One inroad explored by the Center for Human Rights and Environment (CEDHA), the International Human Rights Law Group, and the Center for International Environmental Law (CIEL), in an amicus brief presented to the Court, would have all rights exercised *by the community*, especially in cases involving indigenous peoples. This is an innovative approach to the system. The approach, however, may not be considered standard, and may not always be successful. As jurisprudence may lean in this direction, such an approach may be further explored.<sup>26</sup>

### *States and Individuals as Subjects of International Human Rights Law (Not a Corporation)*

The IAHRs is a forum for individuals to bring suits against States, or for States to bring suits against other States. Unlike national fora, the system *cannot* be used to bring suits against corporations. This is an important issue which environmental advocates must consider since in many cases the perpetrator of environmental abuse is a corporation. One

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<sup>26</sup> See [www.cedha.org.ar](http://www.cedha.org.ar) (Documents on Line; or Amicus Briefs section)



alternative and way around this limitation, however, is to litigate against the State for not taking the necessary preventive measures to avoid corporate abuse. We recall that the system obligates states to take necessary measures to ensure the respect for the human rights enshrined in the Convention.

#### *Confidentiality of the Process*

When a given case is still at the Commission level (prior to the Court), the procedure is confidential, and cannot be shared with the press. This may limit alternative campaign strategies. Once the case is at the Court level, the case can be publicized.

The Commission may send a report to the State summarizing the case facts and its recommendations (see below) that is also entirely secret. The report is an ultimatum for the State to comply before the facts and recommendations are revealed to the public.

The costs of confidentiality for public advocacy of using the system must be considered before initiating legal action.

#### *Time Factor*

There are various time considerations that should be taken into account before committing to litigation in the IAHRs. A case can take from 1 year to 4 years to run its course. This will depend on varying factors. First, the degree to which the advocates of the plaintiff party (the NGO, as the case may be), pressure the Commission and State to move the case. If the NGO is strongly behind the case, this can speed up the process substantially. Also, the commissioner in charge of the particular country can greatly influence the time delay. Certain commissioners may move more quickly than others.

The State will always ask for extensions to the Commission, and these are normally granted. In practice, the petitioner only reacts against these extensions after several have been requested (at least two) by the State. Political pressure due to the delicate nature of the case may greatly influence its fluidity through the system. If the case is very high profile and generates pressures to the State, it can be resolved remarkably quickly, even in just a few months.

Further, some countries, due to their political presence or to their history of human rights abuses in the system, may receive more attention than others by the Commission. Much also depends on the Commission's attorneys assigned to the cases, which can also greatly delay or speed up the case through its steps.

There is no clear indication or rule governing the time cases may spend in the system. There is a time risk that must be taken into account when choosing the IAHRs for litigation, and this may work as much against as in favor of the plaintiff. What is definite is that the plaintiff party must be actively behind the case to ensure it moves as quickly as possible through the system.

### *Evidence Standards and Burden of Proof*

Unlike most national courts, the Commission and Court have *low* standards of proof. In part this is true due to the difficult and delicate circumstances that may exist to collect evidence. The State, in many cases, has access to the evidence and has eliminated the available evidence for the case. The Court, as a result, has admitted circumstantial evidence as long as these assist the Court in clarifying the facts.

The Burden of Proof of the case is on the State. That is, according to Article 42 (Presumption) of the Commission Statute, the facts reported in the petition shall be presumed to be true if, during the maximum period set by the Commission, the government of the State in question has not provided pertinent information to the contrary. This favors the petitioner. Hence, if the State does not expressly deny the facts, with supporting counter evidence, then the Commission recognizes the evidence submitted by the petitioner as true. If the State denies the evidence, it must specifically prove that the evidence is not valid.

As a good rule, the petitioner should attempt to include *all* evidence possible, and not discard a fact because it cannot be proven, or because it may seem difficult to prove in a national court.

### *Precautionary and Interim Measures/Precautionary Principle*

The precautionary principle is an emerging principle of international environmental law that requires anticipating and avoiding environmental damage before it occurs, especially where failure to do so would result not only in environmental degradation, but in human rights violations as well.

Principle 15 of the 1992 Rio Declaration is the most widely accepted elaboration of the precautionary principle in international environmental law:

In order to protect the environment, the precautionary approach shall be widely applied by States according to their capabilities. Where there are threats of serious or irreversible damage, lack of scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation.<sup>27</sup>

Numerous international environmental law instruments both before and after Rio have endorsed the precautionary principle.

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<sup>27</sup> Rio Declaration, *supra* at note 21. As explained in greater detail in Annex I, the precautionary principle was first explicitly introduced into international law in the North Sea Ministerial Conference and was included in the Final Declaration of the Second International North Sea Conference in 1987. The principle was repeated at the Third North Sea Conference in 1990, and the principle was eventually included in the 1992 Convention for the Protection of the Marine Environment of the North-East Atlantic (the OSPAR Convention). Declaration of the Third International Conference on Protection of the North Sea, March 7-8, 1990, reprinted in I YEARBOOK OF INTL ENVTL L. 658, 662-73 (1990)); *see* Convention for the Protection of the Marine Environment of the North-East Atlantic, art. 2(2)(a), Sept. 22, 1992, reprinted in 32 I.L.M. 1069 (1993) (entered into force March 25, 1998).

In essence, the precautionary principle shifts the burden of proof from those threatened by an environmentally destructive project, such as the Petitioners, to those who want to proceed with the activity and who are more fairly required to make a showing that the project will not result in the threatened harm. This is especially true where the proponent of the project has not performed environmental impact assessment and has not even allowed participation by the affected peoples.

The precautionary principle may thus be seen as the environmental law analogue to the concept of precautionary measures which by statute and regulation can be employed by the Commission and Court on Human Rights.<sup>28</sup> When threats of irreparable harm to persons and/or the environment are posed, prudence dictates “erring on the side of caution” and preventing the threatened action until full consideration of the underlying issues can take place.

Article 29 of the Commission Regulations on Precautionary Measures states:

1. The Commission may, at its own initiative, or at the request of a party, take any action it considers necessary for the discharge of its functions.
2. In urgent cases, when it becomes necessary to avoid irreparable damage to persons, the Commission may request that provisional measures be taken to avoid irreparable damage in cases where the denounced facts are true.
3. If the Commission is not in session, the Chairman, or in his absence, one of the Vice-Chairmen, shall consult with the other members, through the Secretariat on implementation of the provisions of paragraphs 1 and 2 above. If it is not possible to consult within a reasonable time, the Chairman shall take the decision on behalf of the Commission and shall so inform its members immediately.

Article 24 of the Rules of Procedure of the Inter-American Court on Human Rights states:

1. At any stage of the proceedings involving cases of extreme gravity and urgency and when necessary to avoid irreparable damage to persons, the Court may, at the request of a party or on its own motion, order whatever provisional measures it seems appropriate, pursuant to Article 63(2) of the Convention.

These articles of the Court and Commission regulations are important powers vested on the Commission and Court over member States, and should not be underemphasized. In its history, the Commission and Court have acted on behalf of victims to force States to take immediate action in favor of the plaintiff party.

### **C. Procedures of a Case entering the System**

We highly recommend that interested parties refer to the Statute of the Inter-American Commission on Human Rights, which details the procedures of a case entering the

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<sup>28</sup> When the Court applies such measures they are referred to as Interim Measures.

system. There are also several publications available detailing and commenting this procedure. The Commission also publishes a short manual intended to assist petitioners in the preparation of petitions.<sup>29</sup> We've included in the annex, the style form the Commission requests petitions conform to.

#### *Who may present a Petition (case) to the System*

Any person or group of persons or nongovernmental entity legally recognized in one or more of the member states of the OAS may submit petitions to the Commission, on one's own behalf or on behalf of third persons with regard to alleged violations of a human right. This is an important point, since NGOs may actually identify and present a case before the system, without having to convince a potentially unwilling party to confront his/her violator. This also permits *any* party to present a case on behalf of deceased or disappeared victims.

This is an important difference between the Inter-American Human Rights System and the European System.

#### *Admissibility*

Before the Commission assesses the merits of a petition, the petition must meet certain basic requirements. Whether a petition is deemed admissible will determine the degree to which the entities charged with protecting the rights enshrined in the American Convention can hear, judge, and act upon a particular case or alleged violation.

When a petition enters the system, the Commission's Secretariat makes a preliminary judgment as to whether or not the petition conforms to the Convention's admissibility criteria. Articles 46 and 47 of the Convention (as well as provisions of the Commission's regulations) stipulate what admissibility criteria an individual petition must meet before the Commission can undertake a merit-based finding.

For a petition to be admitted by the Commission three conditions must be met:

1. the accused State must have violated one of the rights established in the American Convention or the American Declaration;
2. the claimant must have exhausted the possibilities of legal redress in the State in which the violation occurred and his or her petition to the Commission must be presented within six months of the final judgment by the tribunal concerned; unless domestic legislation of the State involved does not afford due process, denies access, or prevents exhaustion of remedies, or causes an unwarranted delay in rendering a final judgment. (Art. 37, Statute);<sup>30</sup> and
3. the claim should not be the subject of some other international procedure

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<sup>29</sup> See: Human Rights: How to present a petition in the Inter-American System. Organization of American States.

<sup>30</sup> When the petitioner contends that he/she is unable to prove the exhaustion of local remedies, it is up to the government against which the petition has been lodged to demonstrate to the Commission that the remedies under domestic law have not previously been exhausted. (Art. 37, Statute)

### *Requirements for the Petition*

All petitions should be in writing. There is no form or special format that must be followed, but a petition should contain all the available information on the case.

The petition should include<sup>31</sup>:

1. The name, nationality, and relevant contact information about the person or persons making the denunciations.
2. An account of the act or situation that is denounced, and if possible, the name of the victims of the violations.
3. An indication of the state in question that the petitioner considers responsible for the violation.<sup>32</sup>
4. Information on whether the remedies under domestic law have been exhausted or whether it has been impossible to do so.

### *Reception and Observations*

The Commission, through its Secretariat, receives the petition, and after entering it in its register, acknowledges receipt and if accepted, determines the admissibility of the petition. Once the Commission begins inquiry, it contacts the government concerned, informs it that a claim has been received against it and invites the government to reply to the accusations.

In serious or urgent cases or when it is believed that the life, personal integrity or health of a person is in imminent danger, the Commission shall request a prompt reply from the government. This request is not considered a pre-judgment with regard to the case.

### *Admission of the Case by the Commission*

Once the Commission requests information from the State, the State has 90 days to provide the requested information. With justifiable cause the State may request a 30-day extension, which generally and systematically occurs. In practice, the petitioner may, after several extensions, request that the Commission deny further extension request.

The Commission may, in order to gain a better understanding of the case, forward to the petitioner or his/her attorney the documents supplied by the government, and invite comments to the response.

### *Preliminary Questions*

The Commission shall decide on the following matters<sup>33</sup>:

1. whether the remedies under domestic law have been exhausted and take measures to clarify remaining doubts

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<sup>31</sup> see Art. 32, Statute

<sup>32</sup> Petitions may be filed against any member state of the OAS, although the procedure and possible remedies, and Court jurisdiction depend on whether or not the State is Party to the Convention, and has accepted Court jurisdiction.

<sup>33</sup> See Art. 35, Statute

2. other matters on admissibility or inadmissibility
3. whether grounds for the petition exist or subsist, and if not, to the file closed

### *The Hearing*

If the case file has not been closed, and in order to verify the facts, the Commission may conduct a hearing following a summons to the parties and proceed to examine the matter set forth in the petition.<sup>34</sup> The hearing is a very powerful and useful instrument for the petitioner party. Cases without hearings or with too few hearings are less likely to move quickly, press the State, or achieve desirable results. This instance offers a meeting of the State, petitioner and Commission, in a situation in which the State confronts the accusation and petitioner *vía de* Commission. Hearings are generally held to present documental evidence, discuss specific legal issues, show videos relevant to the case, legal arguments are presented, etc. In few other circumstances will the State offer to dialogue with the petitioner about his/her case in the presence of a third party. Given that the Commission will tend to favor a Friendly Settlement, it will likely use the hearing to encourage the State to correct any wrong doings and/or take appropriate steps towards reparations. It has also been used by the Commission to pressure the State with precautionary measures if it does not ensure the well being of the petitioner. Hearings may be requested to the Commission (but will not necessarily be granted) at the will of the petitioner, usually to present new elements of the case. Considering the large caseload handled by the Commission, petitioners should justify why the hearing is important to the case when they make the request for a special hearing. The petitioner should never delay in excess to file a case for lack of pertinent information, since this information can be presented at the instance of the hearing.

Since the Commission only meets twice a year, hearings may be formally scheduled only every six months. If the petitioner needs to move his/her case more quickly, special meetings (hearings) may be requested to the Commission. These sessions may take place at the Commission in Washington, DC, or can sometimes be arranged in alternative sites. In some cases, the Commissioners may be able to meet with the parties in the country of the case to review advances in negotiations towards a friendly settlement. It is unlikely that the Commission will agree to travel to a site merely for a meeting.

### *On-Site Investigation*

If necessary and advisable, the Commission shall carry out an on-site investigation, in which the States concerned shall furnish all necessary facilities.<sup>35</sup>

In serious and urgent cases, only the presentation of a petition or communication that fulfills all the formal requirements of admissibility shall be necessary in order for the Commission to conduct an on-site investigation with the prior consent of the State in whose territory a violation has allegedly been committed.<sup>36</sup>

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<sup>34</sup> See Art. 43, Statute

<sup>35</sup> See Art. 44.1, Statute

<sup>36</sup> See Art. 44.2, Statute

Once the investigation stage has been completed, the case shall be brought for consideration before the Commission, which shall prepare its decision within 180 days.<sup>37</sup>

#### *Actions by the Commission*

If the Commission decides that the government committed a violation of human rights, it will recommend that the government repair the breach, investigate what happened, compensate the victims, and desist from further violations of fundamental rights. The Commission cannot force this outcome, but it will try to achieve it in various ways.

#### *Friendly Settlement*

A friendly settlement may be reached at any stage of the examination of a petition. The Friendly Settlement in fact is one of the most useful and most used instruments of the system to address human rights violations. The Commission in this case, acts as an organ of conciliation between the plaintiff and the defendant or State. By the Convention, the Commission first must take steps to reach a Friendly Settlement between the parties. Only in extreme cases (when the life of the petitioner or his/her family may be in danger), might the Commission decide to skip this step.

We mentioned above, that most cases do not proceed to the Court. States find it politically uncomfortable and risky to have the Court favor against them. For this reason, the out of Court settlement is a preferred last resort mechanism for the State. For the plaintiff party, this can also be an effective means to obtain financial and/or political retribution and avoid a lengthy Court trial. The Friendly Settlement has allowed ample, timely and effective remedies, oftentimes more favorable than the settlements that might otherwise be reached via Commission and/or Court intervention.

States are generally pre-disposed and prefer a Friendly Settlement to the bad press generated by a case, not to mention the possible adverse outcomes and jurisprudence set in a Court decision as well as possible international penalties faced due to non-compliance with international law. The Commission, meanwhile, will also try to resolve the case out of the Court through the Friendly Settlement mechanism.

#### *The Commission Report*

If a Friendly Settlement is not reached, the Commission shall examine the evidence provided by the government in question and the petitioner, evidence taken from witnesses to the facts or that obtained from documents, records, official publications, or through an on-site investigation and prepare a report stating the facts, conclusions and recommendations regarding the case.

The Commission then presents its report to the State concerned. If with a period of 3 months the matter has not been settled, that is, if the State has not taken action to remedy the situation, the Commission may set forth an opinion and conclusions. The Commission may make pertinent recommendations and prescribe a period within which the government in question must take the measures necessary to remedy the situation. When the prescribed period has expired, the Commission shall decide to publish the report.

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<sup>37</sup> See Art. 44.3, Statute

In the event the State in question is not party to the American Convention, the Commission's final decision shall include any recommendations the Commission deems advisable and a deadline for their implementation. If the State does not adopt the measure recommended by the Commission, the Commission may publish its decision.<sup>38</sup>

The publication of reports by the Commission is important leverage for States to act to avoid public hemispheric scrutiny. States generally do not wish to see that an international institution such as the OAS publishes information about human rights violations occurring in their territory. If at all possible, States will try to avoid, through intense lobby, that such reports are published.

Civil society actors may contribute to reports through various modalities, either by contributing information to the OAS on a given topic or case, or by following up State reports with Shadow Reports to clarify, extend, or contradict information therein contained.

#### *General and Special Reports*

As already briefly mentioned, the Commission prepares a series of reports during the year that are presented at the General Assembly, which can be useful to pressure States to remedy abusive situations. These are useful publications in which NGOs and other interested parties may find a space to lobby for the inclusion of a particular issue or matter. The details of these reports are listed in Chapter V of the Statute. They are essentially Draft Reports, Reports on the situation of Human Rights in a State, the Annual Report, and reports on Economic, Social and Cultural Rights. It is important to remember that the Commission may make observations as well as recommendations for remedy in such reports.

The Commission Reports are considered Jurisprudence by the IAHRs, particularly by the Commission itself. Therefore, any mention of pertinent legal issues (such as the importance of a healthy environment), can be considered as past jurisprudence of the Commission and should be cited in legal argumentation before the system. Commission reports can be consulted via the Commission website.<sup>39</sup>

#### *Passage of the Petition to the Court*

If a State party to the Convention has accepted the Court's jurisdiction, the Commission may refer the case to the Court. However, even if the State has not accepted the Court's jurisdiction, the Commission may call upon the State to make use of an existing option to accept Court jurisdiction in this specific case.

The importance of a case before the system against a member State is not to be undermined. The State will have every incentive to divert the case from the Court, since it will most likely not want to face a possible unfavorable judgment. States prefer to settle

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<sup>38</sup> See Art. 53, Statute

<sup>39</sup> [www.cidh.org](http://www.cidh.org)



at the Commission level (a sort of settlement out of Court) and not face a condemnation (see above: Friendly Settlement).

Unfortunately, the Commission does not have clear criteria on deciding what types of cases go to the Court. The American Convention does not have guidelines to clarify the process. Nor do the IAHRs Statutes or Regulations provide guidance in the matter. The Commission has generally tried to avoid exercising its right to according to Article 51 to refer cases to the Court.

#### *Costs and Time involved at the Court Level*

As is the case for deciding to elevate a case to the Commission, the Court presents several delays and costs that should be taken into account before a case is pushed to this level. The Court is *not* a permanent body, and therefore only meets a few times per year. Parties must travel to Costa Rica, as should NGOs wishing to lobby and assist the Commission or generate public hemispheric interest in the case. In terms of the actual case costs, the Commission cannot always pay for all witnesses to attend hearings, so oftentimes, the plaintiff must defray such costs. Hearings are often cancelled or postponed at the last minute. Lobbying parties should plan on arriving several days before the hearings to prepare strategies, prepare witnesses, hold press conferences, and meet with like-minded NGOs behind the cause in question. Interested parties should consider staying near or at the same lodging sites of the Commissioners, since location is key to access the Commissioners during their stay.

#### *Standing*

Non governmental organizations *do not* have Standing before the Court. Only the Commission and States have Standing and although NGOs often act as advisors to the Commission during Court sessions or as representatives of victims before the Commission, only the Commission can allow NGO intervention or opinion in the various stages of the case at the Court level. Conflict often arises with respect to how the victim's wishes are presented to the Court, since only the Commission assumes this representation at the Court level and may not revert to the NGO representative for input. NGOs are usually given Standing during reparations hearings in order that they provide pertinent information to the Court so that the victim is properly represented.

#### *Publicity of the Case*

At the Court level, the case is no longer confidential. At this stage the press becomes a powerful tool to exert pressure on the State and parties to come to a favorable settlement. Proper lobbying of the press is essential to a successful advocacy campaign before, during, and after the hearings.

#### *Evidence*

The Court may, at the request of a party or on its own motion obtain any evidence that it considers likely to clarify the facts of the case. The party requesting the production of evidence must assume the costs of its proportioning.

### *Sentence/Ruling/Sanctioning Process*

The judgment of the Court shall contain, besides basic information about the parties and judges rendering the decision, the legal arguments of the case; the operative provisions of the judgment; the allocation of compensation; the decision, if any regarding costs.<sup>40</sup>

### *Compliance and Enforcement*

There are no statistics concerning compliance of the decisions of the Commission and Court. Much depends on the will of the State to comply with the verdicts of the system's institutions. In its history, only a handful of cases have reached the Court, and in most of these, the State in question has been a relatively small State with little hemispheric political power to afford to ignore adverse decisions and rulings. In other more recent cases, involving larger and more powerful States, States have conceded to calls for precautionary measures, and cooperated in efforts to subdue or cease actions proving to result in human rights violations.

## **D. Non-institutional Actors of the System**

We have already discussed the Commission and Court and their role in the system, as well as the procedure to file a case in the system. As explained above, while the litigation aspect of the system is the focus of this guideline, non-litigant possibilities exist which can have an important impact for hemispheric affairs.

### *Civil Society Actors (NGOs)*

In most of the cases that have come before the system, an NGO has been the representative of the petitioner before the Commission, and acted as an advisory to the Commission (and as a sort of extension of the will of the victim) when before the Court. We recall that by charter, the system permits any individual or group to bring a complaint representing oneself, or on behalf of another. In fact, only a handful of NGOs have regularly represented victims of human rights abuses. These NGOs have extensive experience with the OAS and its human rights organs, and are an important source of historical and procedural information. It is recommended that individuals seeking to address the system establish contact with experienced litigants to obtain guidance and assistance. Some NGOs which may be important sources of information are: CEJIL, the International Human Rights Law Group, CELS, Comisión Andina de Juristas, CEDHA, CIEL, etc..

These non-official actors of the system are in fact fundamental facilitators of the system, and ensure that States, Commissioners, and Court judges receive vital information about cases, and help guarantee a transparent and effective process. Environmental NGOs interested in using the IAHRs are encouraged to familiarize themselves with these procedures, and participate in the various fora available to civil society to access the system.

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<sup>40</sup> See Art 46, Rules of Procedure of the Court

For a case to have a useful impact in the hemisphere, and in order to take advantage of the various lobby channels which become available throughout the process, the representative of the victim (the NGO, for example) before the Commission must mobilize all available resources in favor of the case, including press and other media tools to pressure the Commission to accept the case and to encourage the State to settle the dispute as quickly as possible.

NGOs have free access to the system, and may participate in most fora of the system, including hearings, Permanent Council meetings and General Assembly meetings. For the GA, a special request to attend should be sent to the Secretary General and permission must be granted.

### *Amici Curiae*

Another useful instrument of the system with growing importance especially in the areas of environment and human rights is the *Amicus Curiae* (or friend of the Court brief). The *Amicus Curiae* has been a useful tool to raise previously unconsidered legal issues, and influence precedent setting jurisprudence at the Commission and Court level, especially as concerns the overlap of human rights and environment. The *Amicus Curiae* is essentially a non-party intervention in the form of a brief outlining the legal issues of the case. *Amicus Curiae* have recently been successfully presented before the Court and Commission, emphasizing environmental circumstances in select cases.<sup>41</sup>

The first *Amicus Curiae* to have an important environmental impact in the system was in the case of the Mayagna Indigenous Community of Awas Tingni and its Effort to Gain Recognition of Traditional Lands. The brief argued that one of the major areas of intersection of international human rights law and environment law is the area of indigenous people's rights. Since at least 1992 the indigenous community of Awas Tingni, Nicaragua has been petitioning the government of that country to gain formal recognition of its traditional lands. For the first time, the OAS Inter-American Commission on Human Rights has sided with an indigenous community in its grievance over land rights and taken the extraordinary step of submitting that grievance to the OAS Inter-American Court on Human Rights. The outcome of the case will establish an international legal precedent regarding the extent of a country's obligation to recognize and protect indigenous traditional land and resource tenure.

Another *Amicus Curiae* before the system arguing for environmental and human rights linkages is the Wichi Indigenous Community case against Argentina, mentioned above. This brief analyzes the intricate relationship existing between these indigenous peoples and their lands with respect to damages caused (and anticipated) by ongoing (and projected) public works in the indigenous territories. The document, a precedent setting submission to the Commission, reviews international laws, treaties and jurisprudence relevant to the defense of several indigenous communities of Northern Argentina, promoting the special recognition and consideration of the interrelationship of human

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<sup>41</sup> See Awas Tingni and Wichi cases at CEDHA website (available in Spanish and English): [www.cedha.org.ar](http://www.cedha.org.ar) (in Amicus Brief Section)

rights and environment, particularly as concerns the symbiotic relationship existing between indigenous communities and their habitat.

#### **E. State Reluctance to Reach the Inter-American Court**

Although very few cases have actually been decided at the Court level, the Commission has been an effective tool to thwart human rights abuses, and to settle numerous cases outside of the Court. Once a case reaches the Commission level, the press it obtains and the resulting pressure on the member State to resolve the case as quickly as possible (or face a Court trial) augments.

States will lobby the Commission to reject the case, or will work with the petitioning party to withdraw the case from the system. The risk of facing trial may be pressure enough to warrant a correction of the abuse, and a resolution for the victim.

If the Commission accepts the case, the State will usually make every effort possible to avoid its passage to the Court. This usually includes settlement with the victim in the form of remuneration. But also, pressure is exerted on the State to remedy existing legislation and or actions taking place in detriment of human rights.

#### **IV. How should environmentalists approach the IAHRs?**

The Inter-American Human Rights System (IAHRS), as its name suggests, is a regional institutional system that focuses on *human rights*. The institutions that comprise it, namely the Organization of American States and its various organs (the Commission, the Court, etc.), are governed by human rights declarations and treaties. For this reason, the operative agenda of the system, the cases that it receives, and the initiatives that stem from the system *all* center on human rights. If we are to consider using the system for environmental advocacy, we must understand that the system will necessarily view our rapprochement through a human rights optic, and we must hence orient our advocacy so that it is in sync with this optic.

The system will always seek to defend human rights, and whatever environmental issues we may raise, must take this into account. The human rights that are enumerated in the international treaties, declaration and other legal documents which the IAHRs regularly refers to, cover a broad range of types of rights, including civil, political social, economic and cultural rights. Many of these rights have important environmental content or can be related to environmentally relevant issues. Some of these can be found in the United Nations Charter, the American Convention, the Universal Declaration of Human Rights, the Charter of the European Commission of Human Rights, the United Nations Covenant on Civil and Political Rights, etc.. Some of the rights appearing in these are for example:

- right to life;<sup>42</sup>
- right to equality before the law;<sup>43</sup>
- right to an effective judicial remedy;<sup>44</sup>
- right to residence and movement;<sup>45</sup>
- right to own property alone as well as in association;<sup>46</sup>
- right to religious freedom and worship;<sup>47</sup>
- right to the benefits of culture;<sup>48</sup>
- right to self determination;<sup>49</sup>
- right to be free from discrimination;<sup>50</sup>
- right to health;<sup>51</sup>
- right to a clean and healthy environment;<sup>52</sup>
- right to be free from interference with one's home;<sup>53</sup>
- right of minorities;<sup>54</sup> and,
- right to identity.<sup>55</sup>

There are many others. What we need to consider is that the IAHRs will heed a plea for a violation of environmental abuse, if and only if, the abuse can be shown to violate a human right in one of the legal instruments it defends. Human rights in the system are understood as those rights set forth in the American Convention and the American

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<sup>42</sup> Universal Declaration of Human Rights, [hereinafter Universal Declaration] G.A. Res. 217 A(III), Dec. 10, 1948, Article 3; American Declaration on the Rights and Duties of Man, [hereinafter American Declaration] adopted by the Ninth International Conference of American States (Mar. 30 – May 2, 1948), O.A.S. Res. 30, O.A.S. Doc. OEA/Ser.L/V/I.4, rev. (1965), Article 1; American Convention, *supra* note 4, at Article 4; ICCPR, *supra* note 32, at Article 6; ICESCR, *supra* note 33, at Article 6; CRC, *surpa* note 35, at Article 6.

<sup>43</sup> Universal Declaration, *supra* note 36, at Article 7; American Declaration, *supra* note 36, article 2; American Convention, *supra* note 4, article 24; ICCPR, *supra* note 32, articles 3 & 26; ICESCR, *supra* note 33, at article 3; CERD, *supra* note 34, at article 3.

<sup>44</sup> Universal Declaration, *supra* note 36, at Article 8; American Convention, *supra* note 4, at Article 25; ICCPR, *supra* note 32, at Article 2.3.

<sup>45</sup> Universal Declaration, *supra* note 36, at Article 13; American Declaration, *supra* note 36, at Article 8; American Convention, *supra* note 4, at Article 22; ICCPR, *supra* note 32, at Article 12.1, CERD, *supra* note 34, at Article 5.d.i.

<sup>46</sup> Universal Declaration, *supra* note 36, at Article 17; American Declaration, *supra* note 36, at Article 23; American Convention, *supra* note 4, at Article 21; CERD, *supra* note 34, at Article 5.d.v.

<sup>47</sup> Universal Declaration, *supra* note 36, at Article 18; American Declaration, *supra* note 36, at Article 3; American Convention, *supra* note 4, at Article 12; ICCPR, *supra* note 32, at Article 18.1; CERD, *supra* note 34, at Article 5.d.vii; CRC, *surpa* note 35, at Article 14.1.

<sup>48</sup> Universal Declaration, *supra* note 36, at Article 27; American Declaration, *supra* note 36, at Article 13; ICESCR, *supra* note 33, at Articles 15.1 & 15.2.

<sup>49</sup> ICCPR, *supra* note 32, at Articles 1,2,&3; ICESCR, *supra* note 33, at Article 1.

<sup>50</sup> Universal Declaration, *supra* note 36, at Articles 1 & 2; ICCPR, *supra* note 32, at Article 2.1 & 26; ICESCR, *supra* note 33, at Article 2; CERD, *supra* note 34, at Article 1.

<sup>51</sup> ICESCR, *supra* note 33, at Article 12.1; CRC, *surpa* note 35, at Article 24.

<sup>52</sup> ICESCR, *supra* note 33, at Article 12.1.b. Protocol of San Salvador Article 11

<sup>53</sup> American Declaration, *supra* note 36, at Article 9; American Convention, *supra* note 4, at Article 11; ICCPR, *supra* note 32, at Article 17; CRC, *surpa* note 35, at Article 16.

<sup>54</sup> ICCPR, *supra* note 32, at Article 27; CRC, *surpa* note 35, at Article 30.

<sup>55</sup> CRC at Article 8.

Declaration of the Rights and Duties of Man.<sup>56</sup> If an environmental abuse cannot be shown to have a direct link to one of these human rights it is very difficult that the plea will have an echo in the system.

Let's consider an example. Let's assume that Government A contaminates a river by releasing industrial waste into the river. Granted the waste may pollute the water, cause displeasing odor, death of plant life, death of fish, disruption of the biological chain, etc., if we cannot show, for example, that the contamination results in the health deterioration of persons, specific individuals or a community, a case brought before the IAHRs to defend against this abuse will not likely be an admissible case to the system. In order for us to approach the IAHRs with the case, we need to look at it through a human rights optic. We need to consider what the consequences of this abuse are to humans, and present the case with "environmental" human rights arguments. Some forms of transforming the strictly environmental nature of this case are to argue that:

1. the contamination of the river by Government A violates the human right to health because the residents along the river are becoming sick from the contaminated water.
  2. the human right to life is violated because individuals living along the river have died from the contamination of the water
  3. the human right to effective judicial remedy has been violated because despite the riverside communities' plea to the judicial system, nothing has been done to stop the contamination
  4. the human right to a healthy environment has been violated due to the multiple environmental impacts of the contamination
- etc.

Essentially, what we've done is to seek the impacts on human life caused by the environmental contamination, since if we argue the case simply for the environment's sake, the IAHRs and its organs will not have evidence or grounds on which to act.

We use another example to illustrate a point. Supposing Government B allows Company X to cut down 1 million ha of rainforest per year for 10 years, part of which is in an indigenous peoples' territory, with the promise that it will provide new housing for any displaced communities of the forested areas in an alternative forest region in another part of the country. The Company will also replenish the cut forest with abundant new trees in 25 urban areas undergoing new park works. The indigenous communities have fought for over a year to halt the development project, but have had their case rejected from the highest level of the national judicial system. We present a case to the IAHRs for the massive negative environmental impact this cutting will have and request preliminary measures to halt the cutting until the case can be resolved. We argue that the cutting will eliminate 1/3 of the country's forestry resources in 10 years, placing at risk the sustainable use of the forestry supply. Along with the trees, over 1000 plant and animal species will die, and the country's climate will drastically change in that 10-year period. Further, we argue that Company X has not done a proper environmental impact assessment, and therefore, it cannot anticipate what the extent of the environmental

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<sup>56</sup> The recently in force San Salvador Protocol has broadened the spectrum.

impact of the cutting will be, which according to World Bank environmental experts, will be much worse than calculated. Based solely on this information, our insistence on preliminary measures will likely have an unfavorable outcome in the system, since although we have shown obvious imminent environmental consequences of the timber cutting, we have failed to give the Commission enough evidence to link the potential impact of the cutting to human rights abuses.

We might consider a better defense of the case before the system, indicating for example that the peoples displaced by the cutting are indigenous peoples that have a symbiotic and cultural connection to their land. Removing them to another area is a violation of their human right to life. Further, the massive consumption of the trees will eliminate an invaluable part of the food chain for the communities living in the areas, not to mention the disruption to tribal hunting patterns caused by the cutting down of significant portions of the rainforest. We can focus our case on a number of rights, including, the right to life; the right to an effective judicial remedy; the right to the benefits of culture; the right to be free from interference with one's home; right of minorities; the right to identity, etc.. These are all rights that can be defended using the IAHRs.

For the sake of typology and guidance, we've divided environmental advocacy before the IAHRs into three basic types or approaches. These are:

1. Transformation
2. Reinterpretation
3. Interpretation

#### *The Transformation Approach*

The *transformation approach* essentially strives to transform environmental claims into human rights claims. This approach follows the example above of the river water contamination. With this approach, we examine environmental degradation from a human perspective, answering the question, *what direct impact does the environmental abuse in question have on humans?* For this we need to break out of the strictly environmental arena, and look at the contact humans may have with the environment and specifically with the case in question. Our approach hence, needs to focus on the humans affected and their human rights.

#### *The Reinterpretation Approach*

The *reinterpretation approach* reinterprets basic human rights to include environmental rights. This approach requires more legal analysis and argumentation in an attempt to expand the vision of the IAHRs of basic human rights to include environmental issues. An example would be to expand the common understanding of a right, such as **the right to life** and broaden this understanding with new concepts of the right, such as the right to a live in a healthy environment as a part of the right to life.<sup>57</sup>

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<sup>57</sup> See Amicus Curiae for Awas Tingni for reinterpretation of **the right to life**; [www.cedha.org.ar](http://www.cedha.org.ar) in Amicus Curiae section. Also for reinterpretation **the right to participate** see Wichis Amicus Brief at same site.

### *The Interpretation Approach*

The interpretation approach allows for the inclusion of other national and international laws, treaties, declarations, etc. into the system. It is essentially a tool allowing the extension of such laws and treaties into the IAHRs, binding States in the hemisphere because they have subscribed to these laws and treaties. Article 29 of the Convention, to which we have dedicated a section in this paper, is the window to this approach (more on the interpretation approach in the following section, Article 29).

### *Article 29*

Article 29 Restrictions Regarding Interpretation, paragraphs (b), (c) and (d), of the American Convention open a window of opportunities to litigate before the IAHRs. It is worth reproducing them here:

No provisions of this Convention shall be interpreted as:

(b) restricting the enjoyment or exercise of any right or freedom recognized by virtue of the laws of any State Party or by virtue of another convention to which one of the said states is a party;

(c) precluding other rights or guarantees that are inherent in the human personality or derived from representative democracy as a form of government; or

(d) excluding or limiting the effect that the American Declaration of the Rights and Duties of Man and other international acts of the same nature may have.

Article 29 of the American Convention wisely articulates a mechanism that allows the American Convention to adapt itself to the evolution of international law, including the adoption of new concepts and trends. As a criterion to resolve potential conflicts between two or more human rights provisions, the criterion forces the application of the provision that establishes a human right in a manner that is most comprehensive and most favorable to the individual (principle *pro homine*). Article 29 similarly requires the adoption of the trends in effect in international law concerning the violation of rights. Thus, to more fully delineate States responsibilities to afford Petitioners special protection, resort must be had to the body of international environmental law that has developed over the past several decades, as well as to various human rights instruments, which collectively require governments to allow affected peoples information and participation concerning development matters which affect them.

Essentially, Article 29 gives us grounds on which to broaden the definition and content of rights that the individual and community have by understanding those rights based on the rights as defined by other treaties and international law to which the State is party, as well as according to national law of that State. Through this extension, States can be held responsible by the IAHRs to broader and more comprehensive understanding of basic human rights. Therefore, by *interpretation*, if the laws of a given State, or the international treaties to which it subscribes, protect the individual from certain environmental human rights, which may be cited in the IAHRs, and the State violates



any one of those rights as per one such treaty or law, or does not provide for adequate protection against the abuse of one of those rights, the IAHRs can be used to litigate against the State.

### *The San Salvador Protocol*

The Additional Protocol to the American Convention on Human Rights in the area of Economic, Social and Cultural Rights, or more commonly, “the Protocol of San Salvador”, was signed at in San Salvador in 1988 by 18 member states and came into force only in 1998.<sup>58</sup> The San Salvador Protocol (SSP) contains 22 articles outlining economic, social and cultural rights. To date 12 countries have ratified the protocol.<sup>59</sup>

The SSP is an important international step in the consideration of the recognition of the symbiotic links between the environment and human rights. Specifically, the SSP in its preamble makes reference to,

the close relationship that exists between economic, social and cultural rights, and civil and political rights, in that the different categories of rights constitute an indivisible whole, ... bearing in mind that ...rights [in the Americas] be reaffirmed ... on the basis of full respect for the ... right of its peoples to development, self determination, and the free disposal of their wealth and natural resources; ...<sup>60</sup>

Article 11 is especially relevant to the environment and to environmental advocates seeking assistance of international law. It reads:

#### Article 11: The Right to a Healthy Environment

1. Everyone shall have the right to live in a healthy environment and to have access to basic public services.
2. The States Parties shall promote the protection, preservation, and improvement of the environment.

Another important environmental right cited in the SSP (with respect to workspace conditions) is Article 7(e) stating that:

State Parties undertake to guarantee in their internal legislation, particularly with respect to: safety and hygiene at work<sup>61</sup>

The SSP defines useful parameters to encapsulate economic, social and cultural rights and will hopefully serve to bring economic, social, and cultural rights to the forefront of national and international law. The SSP delineates certain state and international

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<sup>58</sup> Signatory countries are, Argentina, Bolivia, Brazil, Colombia, Costa Rica, Dominican Republic, Ecuador, El Salvador, Guatemala, Haiti, Mexico, Nicaragua, Panama, Paraguay, Peru, Suriname, Uruguay, and Venezuela.

<sup>59</sup> Brazil, Colombia, Costa Rica, Ecuador, El Salvador, Guatemala, Mexico, Panama, Paraguay, Peru, Suriname, and Uruguay

<sup>60</sup> San Salvador Protocol. Preamble.

<sup>61</sup> San Salvador Protocol. Article 7(e).

organization responsibilities with respect to economic, social and cultural rights, which may be especially useful to environmental advocates seeking redress before states for violations of human rights abuses related to environmental degradation. Some of these are:

- a) the obligation of States to Adopt Measures (Article 1), through national and international cooperation in order to fully observe the rights contained in the protocol..
- b) the obligation of States to Enact Domestic Legislation (Article 2), to ensure the rights enumerated in the SSP
- c) the obligation of States of Non-Discrimination (Article 3);
- d) that States, in order to protect these rights, must submit periodic reports on the progressive measures taken to ensure due respect for the rights in the SSP; (Article 19 (1));
- e) with respects to Articles 8A and 13 (Trade Unions and Education), the Inter-American Commission on Human Rights may give rise to legal petitions against States for non-compliance with the Inter-American Human Rights System (Article 19 (6));
- f) the Commission may formulate such observations and recommendations as it deems pertinent concerning the status of economic, social and cultural rights established in the SSP (Article 19(7)).

The SSP is a fairly new international legal instrument that has yet to be used or applied. It is however, cited in more recent analysis of international human rights law, and references to the SSP also appears in several precedent setting briefs aiming to link environmental degradation to human rights abuses.<sup>62</sup> The SSP makes a bold step to reaffirm and regulate economic, social and cultural rights. Due to the difficulty and reluctance of most States to ensure economic, social and cultural rights, these rights have been for the most part ignored by international tribunals, although the rising awareness and debate over the importance of achieving sustainable development, as well as the growing importance of human rights to international tribunals (and the ability to enforce them at an international level), has begun to change this deficiency of the international legal arena.

It is important to understand that the SSP is an addendum to the American Convention. The spirit of the SSP, and the specific language it contains, sets out a series of useful and enforceable obligations and duties, while at the same time, limiting the capacity of the system to achieve some of its objectives. Existing Inter-American human rights institutions *may not* use their full powers with respect to the rights outlined in the SSP. The SSP, for example, limits the Commission to very specific powers:

The Commission (and in certain cases the Court) can:

1. Receive petitions against States based on violations of the Rights cited (only) in Articles 8A and 13 (Trade Unions and Education) of the SSP.<sup>63</sup>

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<sup>62</sup> See Amicus Briefs on Awas Tingni and Wichis at: [www.cedha.org.ar](http://www.cedha.org.ar)

<sup>63</sup> See Article 19(6) of the San Salvador Protocol: Means of Protection

2. Receive Annual Reports of the States on the state of observance and protection of economic, social and cultural rights (as submitted to the Secretary General by the States)<sup>64</sup>
3. Formulate observations and recommendations on the status of Economic, Social and Cultural Rights in all states parties in its annual reports or special reports and present these before the General Assembly<sup>65</sup>

Of the actions it may take, the Commission may file reports, which have served as effective pressure to States to address circumstances in which human rights violations have or are occurring. Although the reporting system does not carry the weight of legal action, it has proven in the past as a deterrent to States that systematically violate human rights.

The SSP in its first Article makes states *progressively* responsible for the observation of the rights recognized by the protocol, depending on their level of development and available resources. Through this responsibility commitment States must at least uphold their level of compromise and protection of economic, social and cultural rights, while strive to improve this level over time. This can be an important compromise with respect to a state's past compliance with upholding such rights.

Another instrument of the Inter-American System is the injunction power. Through its statute and regulations, the Commission and Court may dictate precautionary measures (the Commission) or interim measures (the Court) to avoid imminent violations of human rights. This instrument has proven a very successful tool and power of the System, which has thwarted and prevented human rights violations in many of the hemisphere's countries. It has yet to be seen, whether the Commission will go as far as to dictate precautionary measures in the case of rights enumerated in the SSP.

The SSP, despite its limitations, opens an important door to the defense of economic, social and cultural rights. Its spirit, clearly cited in its preamble, and the wide coverage of rights is well intentioned. Perhaps envisioning a warming to the defense other economic, social and cultural rights, Article 22 leaves an open door to the incorporation of other Rights and Expansion of those Recognized, through an amendment procedure. Likewise, amendments may expand the powers of the Commission to act in the name of other existing rights enshrined in the protocol.

The SSP has at least overcome the initial resistance of most states to protect and ensure economic, social and cultural rights to the individual. There are many aspects of the protocol and its use and application that remain to be explored and tested. The mechanisms through which the states report to the system (to the Secretary General) are not established for example (frequency, content, who reports, etc. Its usefulness as an instrument to protect the environment. It is definitely a good first step towards the defense of economic, social and cultural rights.

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<sup>64</sup> See Article 19(2) of the San Salvador Protocol: Means of Protection

<sup>65</sup> See Article 19(7) of the San Salvador Protocol: Means of Protection

Civil society environmental and human rights advocates who intend to use the inter-American System as a forum for international environmental law should familiarize themselves with the SSP and follow developments and institutional interaction with respect to the protocol. Especially important will be the way in which the Commission and Court make reference to the SSP, and how Article 11 is referenced and applied in future human rights cases coming to the system.

NGOs can take several concrete steps with respect to the rights, duties, and institutional powers contained in the SSP.

1. Bring cases before the System proving violations of articles 8 or 13.
2. Shadow Reports. NGOs are encouraged to produce shadow reports to the State Reports on the state of economic, social and cultural rights submitted to the Secretary General.
3. Provide the Commission with valuable and relevant information on the state of economic, social and cultural rights which the Commission prepares for the system.
4. Introduce references to Article 11 of the SSP (the right to a healthy environment) in individual petitions before the Commission through the use of Article 29 of the American Convention

## **V. In what manner can Environmentalists use the IAHRs?**

We have seen in the prior sections how the IAHRs is arranged, how human rights are addressed by the system, how a case makes its way through the system, and specifically the different ways an environmental case can be presented to the system. Environmental awareness is growing in many member State societies, and is slowly reaching the IAHRs. It is a new area of concern, and will likely see growing attention by the OAS organs, and civil society. What is certain is that the system stands to grow considerably through increased environmental awareness. This guideline is about fostering that awareness and “greening” the human rights system, as much as it is about offering an international legal forum to environmental advocates.

Litigation is one important ground for the development of environmental issues in the IAHRs. We list it first since we would like to see more environmental cases reach the system. Yet, there are several other ways in which the environment can be favored by the system, and these need not be legal in nature. Environmental advocacy can have multiple forms in the IAHRs. Some of these are:

1. **Litigation.** Cases presenting human rights issues with high environmental content are relatively new to the system, yet they have a special and important place for the future of the system. More cases are needed which focus on the environment as a human right, or on “environmental” human rights. By building a case history which address the environment, we can slowly build on international jurisprudence that favors the

environment and increases the likelihood that the Commissioners and Judges will tend to environmental human rights concerns.

**2. Influencing the Election of Judges and Commissioners.** The nomination of candidates to the OAS organs is a highly politicized process that can be influenced by directed and informed lobbying. It is to the advantage of the system and to the environment, that judges and commissioners be sensitive to green issues. This lobbying is open to the public, and interested parties should become informed about upcoming elections, judge and commissioner backgrounds, etc..

**3. Lobbying for national and international environmental programs, initiatives, etc..** By lobbying for recommendations or reparations to be sanctioned by the Commission and Court, and for OAS initiatives and programs, NGOs can help influence hemispheric environmental control, monitoring, education, programs, and legislation protecting the environment. This can range from education campaigns and programs in specific countries or region-wide, to draft national or hemispheric laws, declarations and conventions fostering environmental protection. The General Assembly is an excellent forum to promote new programs and initiatives, but important pre-GA groundwork is necessary.

**4. Precautionary Measures or Interim Measures.** Such measures can help address urgent situations warranting immediate relief to environmental abuses. The Commission and Court have the power to insist on such remedies, and States have a vested interest in complying with Court and Commission requests.

**5. Institutional Reports and Shadow Reports.** Reports issued by the Commission and Court are an important pressure mechanisms for States to comply with environmental legislation or respond to remedial actions necessary to retribute victims of abuse. NGOs may find it useful to provide the Commission with information about a given case which the Commission may be including in one of its reports to ensure that the eventual report covers the case properly. NGOs may also decide that State reports on the condition of the environment and related human rights abuses are not accurate, or do not contain information pertinent to the case in question. In such cases NGOs may draft Shadow Reports to clarify or add information about an environmental case.

**6. Amici Curiae.** The system is ripe to consider the environmental issues in human rights claims. Granted this is a new area to explore within the system, the first reactions of the Commission and Court on admitting environmental arguments have been positive. Several *Amici Curiae* (case briefs) stressing the linkages between the environment and human rights have already been favorably admitted and used at the Commission and Court levels. NGOs working on human rights and or the environment in the hemisphere should consider submitting *Amici Curiae* to the system.

**7. Pressure on States.** The pressure exerted on States when brought to the system is important enough to warrant consideration by environmental advocates.

8. **Jurisprudence.** The gradual introduction of environmental issues in human rights violations cases into international human rights tribunals through the submissions of petitions will make the system more apt for environmental protection.

## **VI. Consideration before choosing the IAHRs for environmental advocacy**

The IAHRs may be a very effective tool to address environmental issues in the American Hemisphere. It can even serve to influence other continental jurisprudence, as has been the case with civil and political human rights. However, the system may not always be the most appropriate channel, or a unique channel for environmental advocacy. These are some questions environmental advocates should ask themselves before choosing the IAHRs to pursue their objectives.

1. To what degree does the case address human rights as understood by the American Convention? If the Commission does not easily identify violations of the human rights contained in the American Convention the case may not have a future in the system.
2. Can we properly identify a victim and a member State of the OAS as a responsible party? The identification of victim and responsible State is key to the case. Without these, we may have a very interesting environmental case, but not one for the Commission or the Court.
3. Are the time constraints, secret nature of the case, and possible costs implied, a hindrance to the advocacy desired?
4. Has internal (national) recourse been duly exhausted, or does one of the exceptions apply? If not, the State will have a good argument for the Commission to reject the case.
5. Have we defined a proper lobbying strategy? Is litigation the best choice? Is a Commission report useful? Is it enough? Should we produce a Shadow Report? Can we lobby for legislation? Or for a regional program? Have we properly identified the best forum for this lobby?
6. Have we understood our limitations and defined our objectives? If our objective is not a legal victory (to win a case), what do we expect to gain (report on a case, program, preventive measures, have a certain judge or commissioner elected, establish jurisprudence, etc.)?

## **VII. Guidelines for Presenting a Case before the IAHRs<sup>66</sup>**

1. Draft a brief and clear description of the facts. Most petitions presented to the Commission by experienced NGOs are no longer than four pages.

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<sup>66</sup> Taken from an unpublished draft manual on the Inter-American Human Rights System prepared by CEJIL.

2. Show that the internal legal mechanism have been exhausted, or show that one of the exceptions to this rule apply
3. Present all national legislation and procedures taken in a clear and explicative manner. Many petitions assume knowledge of internal procedures and laws of which the Commission may not be aware.
4. Include a chapter on the violations of the rights contained in the Convention with a least one or two paragraphs explaining each violation. Keep in mind that you can present more information and facts on the violations in a latter instance.
5. Include a final chapter of Conclusions stating that the State is obligated (, by by its ratification of the Convention) to protect the rights of the Convention.
6. If a victim o witness is in danger you may request precautionary measures.
7. Direct your complaint to:  
 The Executive Secretary of the Commission  
 Inter-American Commission on Human Rights  
 1889 F. Street, NW  
 Washington, DC 20006  
 Telephone: (202) 458-6002  
 Fax: (202) 458-3992
8. Include Contact information.  
 Address, e-mail, telephone number, fax, etc.

### **VIII. What results can be expected?**

The IAHRs offers multiple inroads to defend against environmental abuses. It also offers the possibility to prevent them. We've seen that the IAHRs is more than a mere courtroom to litigate. Likewise, the system offers a wide variety of possible results from its use. States are reluctant to go to court, and will seek alternative conflict resolution mechanisms. The system offers several. These results range from monitory retribution, to new legislation, to education programs, to press, to exposure and regional and international experience in protecting the environment. Knowing what these results may be is the best way to make the most of the system for our advocacy objectives.

The IAHRs can be:

1. a forum for litigation in favor of environment
2. a way to force States party to abide by hemispheric conditions
3. a way to obtain precautionary measures stopping imminent danger to the environment and to peoples suffering environmental abuse.
4. a channel to gain press coverage in favor of environmental concerns
5. a forum to debate, design, and implement more environmentally sustainable national laws and international treaties
6. a way to ensure that States develop appropriate environmental education programs.
7. a forum on which to build environmental jurisprudence (history) at the international level

8. an international forum permitting individuals, NGOs, and other civil society actors to defend themselves against States.

## **IX. Conclusions**

While the idea of an Inter-American Human Rights System swarmed with environmental cases may seem far-fetched, certainly there is room to include the environment and environmental issues in human rights advocacy. This is already a reality. The intention of this guideline is not to openly call for environmental cases to approach the system. This is not about raining cases on the Commission, which is already overloaded with what are strictly traditional human rights cases. Such a result may in fact work against the introduction of environmental issues into the system. What would be more effective would be the steady and progressive recognition of the system of environmental human rights and how human rights can be adversely affected by environmental degradation. This will only be achieved by the strategic insertion of cases with high environmental profile. The environmental advocacy community has an interesting and powerful tool at reach that must be carefully evaluated and strategically employed to achieve meaningful results. At first, small victories may be more useful than large ones, focusing primarily on building jurisprudence, experience and history, and always striving to build awareness and harness useful legal instruments to protect and promote the environment.



## **X. Contacts**

**OAS Homepage:** <http://www.oas.org>

**Inter-American Commission Homepage:** <http://www.cidh.org>

**Inter-American Court Homepage:** <http://corteidh-oea.nu.or.cr/ci/>

**Inter-American Commission Address:**

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**Center for International Environmental Law**

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## **XI. Basic Documents of the Inter-American Human Rights System On-line**

-Basic Documents of the Inter American Human Rights System

<http://www.cidh.org/basic.htm>

-American Declaration on the Duties and Rights of Man

<http://www.cidh.org/Básicos/basic2.htm>

-American Convention on Human Rights

<http://www.cidh.org/Básicos/basic3.htm>

-Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social, and Cultural Rights “Protocol of San Salvador”

<http://www.cidh.org/Básicos/basic5.htm>

-Statute of the Inter-American Commission on Human Rights

<http://www.cidh.org/Básicos/basic15.htm>

-Regulation of the Inter-American Commission on Human Rights

<http://www.cidh.org/Básicos/basic16.htm>

-New -Regulation of the Inter-American Commission on Human Rights

<http://www.cidh.org/Básicos/nuevoreglamento.htm>

-Statute of the Inter-American Court on Human Rights  
<http://www.cidh.org/Básicos/basic17.htm>

-Rules of Procedures of the Inter-American Court on Human Rights  
<http://www.cidh.org/Básicos/basic18.htm>

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