PRACTICAL MATTERS FOR CONSIDERATION IN THE ESTABLISHMENT OF A REGIONAL HUMAN RIGHTS MECHANISM: LESSONS FROM THE INTER-AMERICAN EXPERIENCE*

W. Michael Reisman**

This article suggests models and considerations for establishing regional human rights mechanisms based on the experience of the Inter-American human rights system. The proposed structure is limited to experience gained under one system, and local conditions may require some adaptation and deviation from the structure proposed. No claim is made that the experiences of human rights regimes in other parts of the world are irrelevant or that extrapolation from these would not enhance particular regional mechanisms. But some of the challenges faced in the Inter-American system have been especially daunting, so its solutions and achievements may be particularly useful for venues that seem resistant to inter-governmental human rights regimes. It is hoped that this article will initiate further inquiry into how the experiences of different regional human rights systems can be drawn upon to inform the establishment of new human rights mechanisms in regions and sub-regions where they do not yet exist.

The Inter-American human rights system, which is comprised of the Inter-American Commission on Human Rights, the Inter-American Court of Human Rights, and the political organs of the Organization of American States, is not widely known outside of the Western Hemisphere. In many ways the Inter-American system has not been as efficient as the European regional system, though its mandate is notably broader. The challenges the Inter-American system has faced are, however, severe and make its accomplishments all the more impressive. The fact that government leaders, diplomats, commission and court members, and many non-governmental organizations in the Americas have been able, often in an ongoing adversarial collaboration, to fashion and implement a useful human rights instrument may be of particular importance to those interested in establishing regional human rights systems. Before the usefulness of the

---

* This article is adapted from a presentation made by the author at the Third Asia-Pacific Inter-Governmental Workshop on Human Rights Issues, conducted by the United Nations Centre for Human Rights in Seoul, South Korea, on July 18-20, 1994.

** Wesley Newcomb Hohfeld Professor of Jurisprudence, Yale Law School; Chairman, Inter-American Commission on Human Rights, Organization of American States, 1994-1995.

Inter-American experience can be assessed in any regional context, it is first necessary to provide a synopsis of the Inter-American system and its operation.

I. THE INTER-AMERICAN SYSTEM OF HUMAN RIGHTS

The Inter-American system comprises thirty-four countries in North, Central, and South America and the Caribbean with a population of more than 600 million. Geographically, the Americas stretch from Tierra del Fuego in the Southern Cone to the Arctic Circle and from the Pacific to the Atlantic and throughout the Caribbean. Four languages are officially recognized by the Organization of American States, but there are many other indigenous and ancient languages that are spoken by tens of millions of people, as well as new languages, such as Creole, which have taken shape and generated rich cultures since Columbus. In contrast to Western Europe, in which Roman civilization was to some extent the common cradle for most of the legal cultures that have developed, the Western Hemisphere includes continental and continental-colonial approaches to law. These include English-Colonial approaches in many of the Caribbean states, the Westminster model in Canada, and the United States' distinctive constitutional experience. The major religions in the hemisphere are the product of the struggles of the Reformation, but African and indigenous religions thrive, and the new world has provided and continues to provide fertile ground for the growth of new faiths.

Development in the Americas varies widely from primitive subsistence economies to the most advanced industrial and science-based economies. The distribution of wealth ranges from some of the poorest economic sectors in the entire world to some of the richest. The degree of social stability varies from countries that are in virtual civil war, to countries in which constitutional remissions of political power are infrequent and power is often transferred by coup, to highly stable democracies, some of which, particularly in the Caribbean, should serve as a world standard for the conduct of elections. In parts of the Americas, terrorism, whether politically motivated or narcotics related, is a recurrent feature. Narcotic criminal organizations figure in terrifyingly large ways in many of the domestic political systems.

Setting up a regional human rights system at the intersection of so many axes of diversity was not easy. Although the system is still evolving and undergoing periodic crises, it is now recognized throughout the Western Hemisphere as an important part of its common political civilization and, in many parts, as a critical foundation of constitutional government.

The Organization of American States (OAS) is a pioneer of modern human rights law. The OAS Charter of 1948 incorporates the "fundamental rights of the individual" as one of the Organization's founding principles.[1] The American Declaration of the Rights and Duties of Man (American Declaration), prepared by the Inter-American Juridical Committee in 1947, was adopted by the OAS in

[1] Charter of the Organization of American States, Apr. 30, 1948, 2 U.S.T. 2394, art. 3, ¶ J.

Bogota, Colombia, in 1948 to elaborate upon the Charter's general commitment to human rights.[2]

The Inter-American Commission of Human Rights (Commission) was created in 1959 to serve as a mechanism for overseeing national implementation of such human rights commitments.[3] Composed of seven members elected in their individual capacity, the Commission started operating in 1960 with a vague mandate. In 1965, its competence was expanded to accept communications, request information from governments, and make recommendations "with the objective of bringing about more effective observance of human rights."[4] In 1967, the OAS Charter was amended, and the Commission became a principal organ of the OAS. The American Convention of Human Rights (American Convention), signed in 1969, incorporated the Commission and assigned it specified conventional competences.[5] It also created the Inter-American Court of Human Rights (Inter-American Court). The American Convention entered into force in 1978. Currently there are twenty-five parties to the Convention.

The Commission has three forms of jurisdiction. Its conventional jurisdiction applies to the twenty-five states that have, to date, become parties to the American Convention. Its judicial invocative jurisdiction provides the competence to invoke the Inter-American Court; it applies to the state-parties to the American Convention that have accepted the Inter-American Court's jurisdiction. While these two forms of jurisdiction depend upon adherence to the American Convention, the Commission's declaration jurisdiction applies to all parties to the OAS Charter, indeed, to all states in the Americas. Hence, every independent state in the Western Hemisphere, even those which have not yet become party to the American Convention, is subject, in some form, to the Commission's jurisdiction.

The Commission's jurisdiction may be invoked by citizens and organizations within the hemisphere. On its own initiative, the Commission may also prepare country reports. To facilitate both of these activities, the Commission conducts on-site visits to individual countries. The Commission also plays a role in regional codification and progressive development. It has drafted a number of important human rights instruments for the OAS, provided technical assistance to state-parties in matters concerning the American Convention, and litigated cases before the Inter-American Court.

Human rights are about individuals; therefore, it is no surprise that a substantial part of the daily work of the Commission comes from individual petitions. Article 44 of the American Convention states:

---

[2] *American Declaration of the Rights and Duties of Man* (1948), *in* ORGANIZATION OF AMERICAN STATES, HANDBOOK OF EXISTING RULES PERTAINING TO HUMAN RIGHTS IN THE INTER-AMERICAN SYSTEM, at 21, OEA/Ser.L/V/II.60 Doc. 28, rev. 1 (1983).

[3] *Id.*

[4] *Id.* at 10.

[5] American Convention on Human Rights, Nov. 22, 1969, 9 I.L.M. 673 [hereinafter American Convention]. Unless otherwise specified, all references to articles refer to the American Convention.

> Any person or group of persons, or any nongovernmental entity legally recognized in one or more member states of the Organization, may lodge petitions with the Commission containing denunciations or complaints of violation of this Convention by a State Party.[6]

A case begins on receipt of a petition alleging a violation of human rights. Petitions about the same event often come from a number of different sources. The Commission examines each petition in terms of the basic requirements of Articles 46 and 47: whether the petition contains names and signatures, whether it states facts that tend to establish a violation of the American Convention or whether it is manifestly groundless, whether domestic remedies have been exhausted, whether the petition has been lodged within specified time limits, and whether the petition is pending in another international proceeding or has already been before the Commission.

If the petition satisfies these threshold requirements, it is relayed to the named government for the latter's information and views. The information supplied by the government may lay the matter to rest, in which case the Commission is required by Article 48(b) to order that the record be closed. It is also possible that the information provided may establish that the petition is inadmissible, which also terminates the procedure. If neither occurs, the Commission, with the knowledge of the parties, must proceed to investigate the matter, asking for information it deems necessary, hearing oral arguments, and receiving written statements. It also puts itself at the disposal of the parties with the objective of reaching an amicable settlement.

If an amicable settlement can be arranged, the Commission issues a short report to that effect to the Secretary-General of the OAS. If there is no settlement, the Commission draws up a report stating the facts, its conclusions, and its recommendations. The report is then sent only to the state concerned, which may not publicize it. If, within three months, the matter has not been settled, the Commission has two options: the provisions of Article 50 state that it may issue a final report, which becomes part of the Annual Report to the General Assembly of the OAS; or according to Article 51, the Commission may refer the matter to the Inter-American Court, if the state concerned has accepted the Inter-American Court's jurisdiction.

Aside from petitions, the Commission must stay abreast of general trends in order to perform the various functions prescribed by Article 41 of the American Convention. It accomplishes this by using a wide-ranging methodology. In addition to its scrutiny of all relevant documents, the Commission devotes a great deal of its efforts to meeting with numerous government officials, spokespersons for non-governmental human rights organizations, and citizens. This methodology is important, for Article 41 also specifies that the Commission is to prepare "reports" or "studies" as it considers advisable.

One form of report is a country report. Country reports have been prepared on the Commission's own initiative, upon instruction from an organ of the OAS,

[6] *Id.* at art. 44.

or even at the spontaneous request of the country concerned. A country report examines the aggregate human rights situation in the particular country on which it focuses and, where appropriate, makes recommendations to the government. Every application of a legal instrument requires interpretation and judgment; thus, governments do not always agree with all of the conclusions the Commission may reach in its country reports. Nevertheless, many governments accept the reports in a positive way and have entered into a dialogue with the Commission about ways of dealing with the problems indicated in the reports, of which the government may have already been aware. A number of governments have been critical of the Commission, feeling that they were singled out unfairly or arbitrarily. In no case, however, is a country report about a member-state of the OAS prepared without consultation with government officials or without giving the government ample opportunity to express its views on the issues in the report.

Sometimes, as a result of the methodology described above and other information received, the Commission finds that essentially the same discrepancies from the standards prescribed by the Convention are occurring in many countries. Some human rights violations are widespread, if not virtually universal. In some cases, these violations are the result of major political, moral, or technological changes to which national laws or institutional practices have not yet adapted. If the Commission were only to confront such pathologies through the petition procedure, case-by-case and country-by-country, remedies might only be secured in the individual cases that are lodged. The underlying factors that precipitated the problem and the broader pattern of abuses, however, would continue. Some of these problems call for fundamental institutional change, as contemplated in Articles 2 and 41(b) of the American Convention. Moreover, it does not seem fair to single out in a country report only one of the many countries engaged in a practice inconsistent with the American Convention.

To deal with these types of problems, the Commission may prepare "studies" as provided for by Article 41(c) of the Convention. These studies enable the Commission to see things in a hemispheric perspective and to develop recommendations on a hemispheric scale. Currently, the Commission is studying the status of women in national legislation in the hemisphere and practices in national prisons throughout the hemisphere. A study of the consequences of large-scale migration on the rights in the American Convention, both interstate and intrastate, is also being considered. This would follow a recommendation made by the General Assembly of the OAS to the Commission on a cognate subject.

The Commission faces a daunting mandate. It is, as stated, responsible for thirty-four countries and more than 600 million human beings, yet the Commission has only seven members, a staff of ten lawyers, a secretarial staff of seven, and an annual budget of less than $1.6 million. The Commission's tasks are rendered even more difficult by the social and economic heterogeneity of the Americas, the intermittent civil strife that still afflicts many countries, the terrorism and narcotics traffic that compound existing human rights problems and present special human rights problems of their own, and the sporadic coups. Incidentally, the suspension of constitutional order has never meant a "time-out" or a suspension

of the Commission's jurisdiction. Indeed, constitutional order itself is a requirement of the American Convention as well as a precondition for the fulfillment of many other rights set out therein. In fact, the Commission has played an important role in reestablishing constitutional order on a few occasions.

The Commission has not always been successful; however, it regularly examines its performance, carefully heeds the OAS's annual review of its activities, and studies responsible non-governmental appraisals, some of which have been quite critical. Moreover, the Commission closely follows jurisprudence and developments in international and other regional human rights systems. To facilitate cross-fertilization, some of the Commission's staff have been lent to other human rights institutions, and the Commission offers short-term internships to lawyers from other systems.

II. THE RELEVANCE OF THE INTER-AMERICAN EXPERIENCE TO OTHER REGIONS

The Commission's experience may be useful in determining how best to create a regional human rights organization. Several specific aspects of this experience are of particular interest. From these points a number of strategic options emerge for creating a regional institution.

1. Supervision of the implementation of human rights obligations by governments is at the interface of law and diplomacy; therefore, the supervisory body should have both legal and diplomatic competence. Implementation of human rights norms frequently involves negotiation at the diplomatic level with national political organs, for which seasoned diplomatic experience is critical. The use of "quiet diplomacy" can expand a commission's tool box in important ways. It permits a human rights commission not only to be critical and censorial (which is often the appropriate course to take), but also, when the circumstances warrant, to work quietly with governments to help fashion domestic arrangements that are consistent with the international human rights obligations they have undertaken.

2. Related to the mixed juridical and diplomatic character of its tasks, the membership of the Commission has to be appropriately varied. Non-governmental organizations (hereinafter NGOs) sometimes lament the fact that not all of the members elected to the Commission are practicing human rights lawyers with rich human rights backgrounds. Such uniformity would be a mistake for an intergovernmental human rights body, particularly for one that is just beginning. Members of the Commission have been professors, human rights activists, former foreign ministers, attorneys general, solicitors general, diplomats, and practicing lawyers. Diplomats and former ministers bring not only a depth of understanding of how governments function, but also knowledge of the nuances of the operational code of diplomacy. These understandings inform the work of the Commission and, at the same time, give governmental personnel the assurance that there are members of the Commission who understand, from profound experience, the reality they inhabit and the problems they daily encounter.

3. The technique of the on-site visit, as it has evolved in the Commission, has proved to be an invaluable instrument in human rights protection and promotion. On-site investigations serve the interests of petitioners, governments, and the Commission. On-site visits enable the Commission to gather information and verify the information it has received. They also enable governments to illuminate the context and complexities of situations, and, in an economic fashion, they permit officials at every level, who are actually engaged in cases at bar, to address the Commission. Finally, on-site visits contain an inherent enforcement potential. There is a fair amount of empirical data showing that the mere presence of an outside, authoritative human rights group tends to dissuade human rights violations while the group is on site.

4. The declaration jurisdiction of the Commission has allowed it to extend human rights supervision to states that have not yet ratified the American Convention. This device addresses the rather common problem of incomplete accession to a human rights instrument. Fortunately, governments in those states that have not yet ratified the American Convention have generally accepted this jurisdiction. As a result, the Commission has effectively extended human rights oversight to the entire hemisphere. It is the hope of all who are committed to the international protection of human rights that states which have not yet ratified the American Convention will do so in the near future. Even if they do not, the Commission's declaration jurisdiction will necessarily continue to develop. As the Commission produces more jurisprudence, the Commission's conventional jurisdiction and declaration jurisdiction could gradually parallel and possibly converge in substance and procedure.

5. The Commission documents human rights violations by parties other than the state itself. While this innovation is controversial, it is one of the Commission's most important regional contributions to the international human rights movement. Groups and individuals that openly oppose the government may commit human rights violations in sectors that they control or briefly invade. Allowing these perpetrators to evade responsibility effectively places a potentially large number of *victims* outside the Convention's protection. If one views the regional human rights system as concerned with the protection of human rights, as one plainly should, this result is intolerable. The Commission has gone one step further, hoping that the law it applies will also attribute personal responsibility to individuals who, acting under a cloak of state authority, commit human rights violations that are also deemed international crimes. The Commission has taken the position before the Inter-American Court that it is now settled international law that individuals can be held responsible for their crimes if the crimes have been characterized as international crimes, and the Court has confirmed this in an important Advisory Opinion.[7] Interpreting the American Convention this way will, it is hoped, help to correct the odd paradigm that has emerged in interna-

[7] Inter-American Commission on Human Rights, Petition for Advisory Opinion, O.C. No. 14. (Jan. 21, 1994).

tional human rights law, under which individuals who participate in human rights violations can escape responsibility under both national and international law.

6. Thanks to the American Convention, the Commission can utilize other international instruments to which state-parties to the American Convention are also party. Article 29(b) of the American Convention provides, in relevant part:

> No provision of this Convention shall be interpreted as . . . 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.[8]

In particular, the so-called humanitarian law instruments have provided the Commission with normative standards for dealing with human rights problems in armed conflict that plainly fall within the reach of the Convention but are not explicitly addressed therein.

7. The Commission has harnessed the expertise of NGOs to assist in its information gathering and educational efforts. This is particularly important because NGOs are the electrical charge of the modern human rights system. The brave men and women in the Western Hemisphere's NGOs, many of whom have died in the line of duty, are indispensable to an effective human rights system. This is not to say that the Commission and NGOs are always *ad idem*.

8. The Commission has consistently rejected the argument that human rights can only be implemented after societies have reached a certain level of economic development or when the government in a given state is legitimate and shows respect for its international human rights obligations. Undoubtedly, it is much more difficult for an institution like the Commission to operate in adverse socio-economic and political conditions. The Commission has not, however, allowed itself to be paralyzed by coups d'etat, massive human rights violations by military dictatorships, civil conflict and insurgency, and desperate social and economic circumstances. Because the Commission has not avoided the hard cases, its "scorecard" is less impressive than it might have been if the Commission had carefully selected easier cases for its docket. For example, because the Commission was actively involved in the Haitian situation, it shares part of the responsibility for the tragic failure of the OAS and the United Nations, as well as the individual states in the Western Hemisphere, to guarantee minimum rights to Haitians.

9. Finally, the Commission never loses sight of the fact that it is not and cannot be institutionally antagonistic to governments. The Commission is created and sustained by governments that voluntarily assumed human rights obligations and is structured to help those governments realize such obligations by highlighting inconsistent behavior, indicating when remedies are appropriate, and helping governments institutionalize new normative arrangements. A commission must have the courage to speak out critically and forcefully when necessary, but it should always try to avoid polarization, seeking to work with governments whenever possible or appropriate. At the same time, governments cannot assume that

[8] American Convention, *supra* note 5, at art. 29(b).

the mere creation of an international mechanism solves the problem. Ultimately, governments themselves must comply with and enforce human rights.

III. ESTABLISHING A REGIONAL HUMAN RIGHTS MECHANISM

The insight gained from the experiences of the OAS and the Commission may be helpful in considering the challenges facing the establishment of a regional human rights mechanism. Assuming that there is a shared interest in creating a regional human rights commission, its possible normative content must then be considered. At the outset, three important issues must be decided: the nature of the instruments open to signature, the normative range of the instruments, and the range of participation that is sought.

A regional system may start up immediately with a treaty, or it may, as the international community and the Inter-American system did, commence with a Declaration. Because a declaration is ostensibly non-binding, many more governments may be willing to endorse it as a common "standard of achievement." This can help, in a heterogeneous regional community, to lay the basis for a common perspective. In a sense, all law is a process of learning. The declaration can serve to accelerate the learning process by generating new departments and new officers that are responsible for "Declaration affairs" in the regional governments. On the other hand, since a declaration is non-binding, the supervisory body that is created will have a considerably weaker mandate. The mandate can be indirectly strengthened by having the declaration serve as an authoritative interpretation of some general human rights commitment in a binding political document. This is the case with the American Declaration and the general human rights commitments in the OAS Charter. To press this too far, however, undermines the attraction of the declaration option and deters states from accepting it. Law is not served by clever tricks.

Alternatively, the initial document may be a convention, as is the case with the European regional system.[9] Plainly, such a convention, a binding legal instrument with explicit obligations, is the ultimate objective of a regional system. The advantage of such a convention is that, because it is binding, the level of real and symbolic commitment to a regional human rights system is higher. Precisely for that reason, there is likely to be a much lower initial subscription to the convention, though this can be affected by the normative range of the instrument in question.

The basic code of international human rights is to be found in a number of well-known instruments which can properly be called *jus cogens*. This means, among other things, that other purported human rights instruments cannot derogate from them. Not every component of the international code has to go immediately into a regional instrument. The American Convention is a comprehensive human rights instrument that covers virtually everything in the international hu-

[9] *See*, e.g., European Convention for the Protection of Human Rights and Fundamental Freedoms, Nov. 4, 1950, Europ. T.S. No. 1.

man rights code. The European Convention acknowledges the comprehensive code, but concentrates on a limited number of rights within it, because those are apparently all that the founding states felt they could politically or institutionally undertake to implement under an international supervisory regime. Thereafter, the normative range of the European Convention has been expanded by additional protocols that extended into other areas of the international program. This means that, at least initially, proportionately more Europeans could sign on to their convention than could their American counterparts.

There is another advantage to the strategy of limiting the initial reach of the convention. Because the Europeans knew what they were undertaking, they could accept the supervisory mechanism with some equanimity. Most of the American states probably did not undertake that sort of investigation prior to ratifying the American Convention, which may have contributed to a certain level of surprise and indignation on their part when the mechanism they had created began to exercise its jurisdiction over them.

Diplomats seeking consensus often produce documents that represent the lowest common denominator. There is a temptation to create a convention that significantly dilutes international human rights obligations in order to extend participatory range. This creates a danger by putting the instrument in conflict with mandatory international standards and undermining, at the very moment of birth, the legitimacy of the entire regional system. A declaration that reproduces the international code but not in a binding instrument, along with a commission, is better than a diluted convention with a commission.

As a rule of thumb, the more comprehensive the normative range of the human rights instruments, the slower will be the pace of ratification or accession. Conversely, the more restricted or concentrated the normative range, the more rapid will be the pace of ratification or accession. The next preliminary question, then, encompasses the range of participation that is targeted.

Human rights are universal, and the optimum regime covers all territorial communities or, in a regional context, all the states in the region. As a practical matter, one has to decide how broad or narrow participation should be at the outset. A narrow participatory strategy of perhaps five or six states, at approximately equal levels of development, creating an intergovernmental human rights mechanism as among themselves, has the advantage of being able to go into operation quite quickly. The disadvantage of this strategy, however, is a failure to reach precisely those communities where many of the human rights grievances are likely to come from. Further, it may not be representative of the region, thereby weakening the potential of a regional system for reinforcing regional ties. A broader participation strategy avoids those problems, but it may require a very restricted convention or a declaration. In other words, the convention or declaration may need either a limited normative range or an ambiguous obligatory character.

The sequencing of the Inter-American system at its inception may be instructive for other regions. The system began with a declaration, for which governments generally are more willing to vote. Nevertheless, over a period of time,

such declarations acquire the force of customary international law. This is what most scholars believe has occurred with the Universal Declaration of Human Rights. The American Declaration was followed several years later by the creation of a commission whose powers were not precisely stated, but whose general mandate was the American Declaration. The Commission developed its information-gathering competence and was later incorporated explicitly into the American Convention. The number of states that were necessary for the entry into force of the Convention was set at a low enough level so that the system could begin to operate even though there might be a substantial number of states delaying or holding out.

This sort of evolutionary procedure has a number of advantages. It permits governments to become accustomed to the idea of a regional system and gives the apparatus of each government time to make the necessary adjustments. Hence, in some contexts, it is advantageous to have a declaration of general principles with the creation of a supervisory mechanism, followed by the initiation of a narrow convention with the expectation that there will be additional protocols added to it in the future.

It is now accepted that a good regional arrangement incorporates a commission and a court. The commission is created first, since it is the more important and more active of the two. In designing the commission, a choice must be made between a commission of experts, who are elected in their private capacity and operate independently of their governments, and a commission in which each state-party may nominate one member. The second arrangement also insists on independence and neutrality, but it is not quite the same as the first. There are arguments to be made for both arrangements, and in the light of the European experience, the second model certainly needs no apologies. The commission of experts model, however, will likely win wider recognition more quickly. If a regional commission is to play both juridical and quasi-diplomatic roles, its membership would benefit from a diversity of backgrounds and experiences, not the least of which being political and diplomatic in nature. Of course, independence and neutrality must not be sacrificed.

The recruitment of professional staff, particularly the executive director, is critical. Ample guidelines for standards for the international civil service exist, and they should be applied rigorously. Appointments should be made on the basis of merit. In order to maintain morale, the secretarial staff should be subject to an administrative review system. For reasons of economy, it is probably best to incorporate the administrative tribunal of an established institution, for example, the Asian Development Bank for Asia and the ILO Tribunal for Africa, etc., rather than to create another new administrative tribunal for each new regional and sub-regional mechanism.

There is one exception: the executive director should be appointed by and serve at the pleasure of the regional commission. This is a critical post, and if the incumbent has lost the confidence of the members of the commission, he or she should leave. This can be arranged by prescribing, in regulations, that this post will be terminable upon relatively short notice.

Human rights are about individual human beings. If the regional system is to be meaningful, individuals should enjoy the right of petition. On the other hand, governments are entitled to consideration. Hence, the petition process should be confidential until the commission has reached a conclusion. Even then, the recommended procedure would be that of the Inter-American system, under which the first confidential report is sent only to the government with recommendations and a statutory period within which the government in question may comply. Only upon failure to comply would the report be transmitted to the petitioner and published. If governments are not ready to concede the right of petition in general terms, even for a declaration or a convention of a narrow normative range, then the regional system may have no choice but to commence with procedures for gathering information.

On the issue of whether the entity should make binding decisions or issue recommendations, from a developmental perspective, it is better to begin with recommendations, which still carry a substantial, if not formal, power of condemnation, rather than insisting on binding decisions. At a later stage, when the regional commission gains some acceptance, it would be possible to urge state-parties to amend their domestic law so that the commission's decisions are enforceable domestically.

For the reasons stated earlier, a competence to conduct on-site visits is an important part of the human rights function. In the Inter-American system, such visits obviously require the agreement and assistance of the governments concerned.

The multiplication of human rights agencies at different levels has tended to duplicate reporting requirements of governments. Hence, regional bodies that are given the competence to prepare reports on state and regional practices should invite submission of reports that are prepared for international organizations or, alternatively, develop procedures under which they rely on the international information, if the state from which information is solicited does not respond.

As a practical matter, most of the information about human rights violations will come from individuals and NGOs; therefore, it is important to design the regional system so that NGOs have regular access. This, in turn, draws attention to the selection of the site for headquarters. One should select a site in a country that has great support for the idea of the commission, good communications, and a willingness to provide some infrastructural support. In addition, there should be a prior commitment to a headquarters agreement with special emphasis on assurance of entry visas for witnesses and petitioners and minimum privileges for the staff.

A regional human rights system can be an important instrument in sustaining constitutional democracies and facilitating the fulfillment of human rights which are now universally recognized. The systems are created by individuals who are located in governments and who are committed to the basic values of the modern international human rights movement: democracy, humane government, and the fulfillment of the basic human rights established by the international system. When a human rights system is in place, it does not operate on its own. It is used

primarily by national actors to restrain governments or individuals purporting to operate with governmental authority from encroaching upon the basic rights of individuals. It is useful and sometimes indispensable instrument for the protection of constitutional democracy and individual freedom.