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INTRODUCTION

The inter-American human rights system is now under review. Conferences have been convened by the academy, by non-governmental organizations, and by the OAS itself. Not everyone agrees on the way the system should change, which is natural, but it is disturbing to see, when reading what has been written and said on the subject by the OAS itself and by some of its member states, that many do not seem to know clearly what the system is for and whom it should serve. The task of deciding how to better the system to meet the new challenges it faces should be carried out after careful consideration of the political, legal, and social realities of the continent - not in an abstract way and certainly not by trying merely to imitate the European approaches, worthy as they may be. This is a different setting and it is the realities of this setting that should guide the amending exercise.

In my view, the ultimate aim of an international human rights system is to strengthen democracy and human rights in national laws and practices and in national civil societies. For these purposes, international law should be a primary instrument in the recognition of rights and the establishment of state obligations in

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relation to them, a primary instrument to support and give legitimacy to changes needed at the national level, and a primary instrument to develop the scope and contents of human rights, but a subsidiary instrument to redress human rights violations when national remedies have failed. Any change in the system needs to be made with these aims in view.

The promotion of human rights, meaning activities that are aimed at furthering human rights, is a vital element for this enterprise: standard-setting, education, and other developmental activities help individuals and groups by recognizing and legitimizing their rights and by enabling them to assert these rights in their own countries. A similar role is carried out through advisory activities designed to help states adapt their laws and practices to their human rights obligations.

Also essential to the final objective are protective activities, such as the individual complaint mechanism and the review of human rights situations in specific countries, particularly when the states being supervised are a long way from full compliance with their international obligations to respect and ensure human rights, as is the case of many OAS member states. Together with promotional activities to empower individuals and groups, the most effective way to induce states to comply with their human rights obligations is through mechanisms that result in a condemnation of the delinquent states, and for this task the Inter-American system has two human rights organs: the Inter-American Commission on Human Rights (the Commission) and the Inter-American Court of Human Rights (the Court). The Inter-American Commission has various functions, among which the most significant are the preparation of

country reports¹ and the handling of individual communications². The Court has an advisory jurisdiction, which can be exercised at the request of any OAS member state or any OAS organ, and a contentious jurisdiction with regard to the states that have recognized such jurisdiction³.

A caveat is in order. While there certainly is a need for regional protective functions, I do not agree that the system exhausts itself in such functions, nor that the individual complaint mechanism should be given the almost exclusive attention that it appears to have gotten in the discussions that began in 1996 following the OAS General Assembly's Ordinary Session in Panama⁴.

¹On country reports, see C. Medina, *The Battle of Human Rights. Gross, systematic violations and the inter-American system (The Battle of Human Rights)*, Martinus Nijhoff, Dordrecht, 1988, 152; and C. Medina, "The Role of Country Reports in the Inter-American System of Human Rights", in *NQHR*, Vol. 15, No. 4, Diciembre, 1997, 457.

²See C. Medina, *The Battle of Human Rights*, note 1, 144; and C. Medina, "The Inter-American Commission on Human Rights and the Inter-American Court of Human Rights: Reflections on a Joint Venture", in *Human Rights Quarterly*, No.4, 1990, 439.

³As of April 1998, 18 states have accepted the contentious jurisdiction of the Court. On the Court's functions, see T. Buergenthal, "The Inter-American Court of Human Rights", in 76 *AJIL*, 1982, 243; C. Cerna, "The Inter-American Court of Human Rights" in M. Kanis (ed.), *International Courts for the Twenty-first Century*, Martinus Nijhoff, Dordrecht, 1992, xxx; and R. Nieto Navia (ed.), *La Corte y el Sistema Interamericano de Derechos Humanos*, Corte Interamericana de Derechos Humanos, San Jose, Costa Rica, 1994.

⁴For a description of the activities around the idea of amending the system, see Juan E. Méndez and Francisco Cox, Prólogo, in *El futuro del*

Regional supervision, carried out by quasi-judicial or judicial organs on the occasion of alleged human rights violations - that is to say always *ex post* - is, and must be, subsidiary to that of the state, not only in the sense that domestic remedies must exist, but also that human rights should be enjoyed, in principle, without the need to resort continuously to the regional enforcement mechanisms. The international human rights system, when operating in a quasi-judicial or judicial manner, never can replace, on a regular basis, the task of states of respecting and guaranteeing human rights. Like any other system of international supervision, it is supposed to operate when national mechanisms, including legislative mechanisms, have failed in the ultimate sense, but not when they fail as a matter of course. Moreover, it is well-known that there is no international system that could bear the burden of carrying out this task in this manner; there is neither money nor the human resources to do this.

Additionally, one must take into account that, in the cases where this type of international supervision operates (which are not many compared to the number of human rights violations being perpetrated in the region at any one moment and to the number of cases reaching the system⁵), nothing much happens unless there is a

sistema interamericano de protección de los derechos humanos (J. Méndez y F. Cox eds., IIDH, San José, Costa Rica, 1998), 9.

⁵The former president of the Commission spoke of the Commission's extreme restraint since only 3% of the communications come to a final decision (See "Palabras del Presidente de la Comisión Interamericana de Derechos Humanos, Decano Claudio Grossman en la sesión inaugural del 95o. Período Ordinario de Sesiones de la CIDH" (Palabras del Presidente)(Washington, D.C., 24 de febrero de 1997), in *El futuro del sistema interamericano*, note 4, 155, 157.

political and social atmosphere that causes the state authorities to think twice before ignoring the international decision. Usually this requires a civil society that is keenly aware of human rights and that has the ability and the means to put the pressure on the state.

The promotion and protection of human rights thus must go hand in hand for the system to achieve its ultimate end. We should not choose between one or the other, but have them operate simultaneously. With these considerations in mind, I next consider what I believe are the main human rights issues in the region, followed by an examination of what the OAS and its organs have done to address them.

THE MAIN ISSUES

The inter-American system for the promotion and protection of human rights is approximately forty years old if we go by the establishment of the Inter-American Commission on Human Rights⁶, or fifty years old, if we count from the adoption of the American Declaration on the Rights and Duties of Man⁷. Yet, after so many years,

⁶The Inter-American Commission on Human Rights was created by Resolution VIII of the Fifth Meeting of Consultation of Ministers of Foreign Affairs (Santiago, Chile, August 12-18, 1959). Text in *Final Act*, OEA/Ser.C/II.5, 10. On the origins of the Commission, see Leblanc, *The OAS and the Promotion and Protection of Human Rights*, Martinus Nijhoff, The Hague, 1977, at 42. See also Karel Vasak, *La Commission Interamericaine des Droits de l'Homme*, Bibliothèque Constitutionnelle et de Science Politique, R. Pichon & R. Durand-Auzias, Paris, 1968; and Anna P. Schreiber, *The Inter-American Commission on Human Rights*, A.W. Sijthoff, Leyden, 1970.

⁷The American Declaration of the Rights and Duties

the Americas still are dealing controversially with the basic issue of democracy and its links with human rights.

One cannot conceive that human rights should be fully respected and enjoyed without all human beings having some participation in the shaping of the society in which they live. The link that necessarily exists between democracy and human rights dominates the fate of human rights and often has proved fatal to the inter-American human rights system. Since the very inception of the inter-American system, predispositions of those ruling the continent have dominated it⁸.

When one reflects upon the linkage between democracy and human rights, one should not think only of the dichotomy between dictators and elected governments. Democracy implies much more: political rights, a right to assemble, a right to freedom of expression, a right to associate, and also the right to enjoy all other human rights. Seen in this way, the Americas are faulty in democracy. First, the continent often has been plagued by dictatorship⁹; second, vast sectors of the

of Man was adopted by the Ninth International Conference of American States in Bogota, Colombia, 1948. Text in OAS, *Basic Documents pertaining to Human Rights in the Inter-American System* (Updated to May 1996) (*Basic Documents*), OEA/Ser.L.V/II.92, doc. 31 rev. 3, May 3, 1996, 17.

⁸For an account of the vicissitudes of democracy and human rights within the inter-American system, see C. Medina, *The Battle of Human Rights*, note 1, Chapter III.

⁹See, for an account of the situation in former times, A.C. Wilgus (Ed.), *South American dictators during the first century of independence*, Washington, D.C., 1937; for more recent times, D. Collier (ed.), *The New*

population have been politically, socially and economically marginalized¹⁰; third, human rights often are not what they should be even for those who are not living in a dictatorship or who are not marginalized.

During dictatorships democracy and human rights are mostly non-existent: only persons close to the rulers may enjoy rights, though as a gracious concession; one misstep can place one in disfavor with the authorities, such that their lives and freedoms will likely be imperiled.

The marginalization of vast sectors of the population presents a different face, as it may occur other than in dictatorial situations. Although it usually is associated with economic deprivation and found to infringe upon social, economic, and cultural rights, marginalization can be also a function of, *inter alia*, gender and ethnicity, and usually it can

Authoritarianism in Latin America, Princeton University Press, Princeton, 1979. See also the Annual Reports of the Inter-American Commission on Human Rights of the last twenty years for an up-to-date account of the situation of dictatorships in the Americas.

¹⁰Clear evidence for the problem is found in the speech made by the OAS Secretary General at the start of the 95th session of the Inter-American Commission on Human Rights, where he forcefully states that although there has been an improvement of the economies, there has been an increase or perpetuation of extreme poverty, of the economic marginalization of entire regions and of the disregard of the rights of significant sectors of the people (See *Acta de instalación del 95 Período de Sesiones de la Comisión Interamericana de Derechos Humanos*, Palabras del Secretario General de la OEA, Washington, D.C., 24 de febrero de 1997 (<http://www.oas.org/EN/PINFO/SG/0224derh.htm>)).

impinge also on civil and political rights, such as life and personal integrity, as well as access to justice, the right to privacy, the right to educate and protect one's children, and the right to have access to public service¹¹.

At present, dictatorships seem to be out of fashion, although we are facing bleak prospects in Paraguay and Peru, and other countries have shaky situations. In terms of elections, the current situation may be favorably described as one in which all the member states of the OAS are ruled by a popularly elected government¹², and we now have several states that have abandoned dictatorship and are in transition to democracy.

But even states purporting to be democratic have major human rights problems. In almost all Latin American countries, due process is often a luxury for only a few, as evidenced by the major but difficult effort being made in many of those countries today to alter the situation¹³; the regime to handle abandoned

¹¹On the consequences of marginalization for the poor, women, and indigenous populations see: PNUD, *Human Development Report 1997*, Figures 2.3, 2.4 and 2.5, at 28, 172 and 43; and 255 World Bank Discussion Papers, L.H. Heise with J. Pitanguy and A. Germain, *Violence against women. The hidden health burden*, Washington, D.C., no date.

¹²I do not include Cuba, because although it is formally an OAS member state, its government cannot participate in the Organization and therefore, for all purposes, it is outside the system. With regard to the situation of Cuba in the OAS, see C. Medina, *The Battle of Human Rights*, note 1, 193.

¹³At least Costa Rica, Guatemala, El Salvador, Venezuela, Bolivia, Paraguay, Argentina, Uruguay and Chile have amended or are in the

children or children who have committed a criminal offense is likewise distant from international standards¹⁴; and freedom of expression is seriously curtailed because of military concerns, the excessive protection of authorities, or religious convictions¹⁵. Furthermore, marginalization remains as before, with the marginalized fighting their way into the system. These are serious, massive violations that must be addressed at the national level with the help of the inter-American system from different angles and using different instruments.

Basically, there are two problems the system should address: (i) how to strengthen representative democracy in the OAS member states so as to deter future dictators, and (ii) how to make all human rights truly

process of amending their Criminal Procedural Code.

¹⁴This is a topic in the whole continent. Costa Rica, El Salvador, Venezuela, Bolivia, Peru, Argentina, Chile and Brazil are in the process of legislating over minors bearing in mind the new International Convention on the Rights of the Child.

¹⁵Laws supposedly protecting the honor of the authorities and sometimes of state institutions, such as Congress, have prompted the Inter-American Commission into examining what is called in the region the criminal offense of "desacato" (contempt of authorities). (See *Annual Report of the Inter-American Commission on Human Rights 1994* (IACHR 1994 Report), OEA/Ser.L/V/II.88 Doc. 9 rev, 17 February 1995, Chapter V). See for the situation in Chile, similar to many other Latin American countries, C. Medina, "La Libertad de Expresión", in C. Medina and J. Mera (eds.), *Sistema Jurídico y Derechos Humanos. El derecho nacional y las obligaciones internacionales de Chile en materia de Derechos Humanos*, Universidad Diego Portales, Santiago, 1996, at 145.

effective for all human beings. Many varied initiatives must be pursued both jointly and severally to achieve these goals. I focus here on three.

A. REPRESENTATIVE DEMOCRACY AND THE OAS.

Some member states of the OAS have long struggled to establish representative democracy and to make it a necessary condition for the respect and enjoyment of human rights. Sometimes the struggle for representative democracy has been only cosmetic - that is to say, it has served as a front for ulterior motives, as when it was used to combat Nazism or Communism, leaving native dictatorships untouched. At other times, the efforts have been sincere, thus benefitting not only democracy itself but also the human beings that democracy should serve¹⁶.

The past few years have seen an increase in the efforts of the OAS General Assembly to strengthen democracy. A recent step was its creation of a Unit for the Promotion of Democracy within the General Secretariat, pursuant to Resolution AG/Res.1063 (XX-0/90). A year later, at its Twenty-First Regular Session in 1991, the General Assembly adopted a resolution on representative democracy, the operative part of which instructs the Secretary General to call for the

¹⁶Among these, for example, the Declaration of Santiago in 1959 which unfortunately sank into oblivion (See Declaration of Santiago in Fifth Meeting of Consultation of Ministers of Foreign Affairs. *Final Act* (OEA/Ser.C/II.5, English)), and the addition of letter b) to article 2 the OAS Charter by the Protocol of Cartagena de Indias in 1985 to include the promotion and consolidation of representative democracy as an essential purpose of the Organization (OEA/Ser.A/2, Rev. 3).

immediate convocation of the OAS Permanent Council in the case of any event causing the sudden or irregular interruption of the democratic institutional political process, or of the legitimate exercise of power by a democratically elected government, in any OAS state member¹⁷. Depending on the circumstances, an ad hoc meeting of Ministers of Foreign Affairs or a special session of the General Assembly may be convened to adopt decisions on the matter¹⁸. Furthermore, Article 9 of the new OAS Charter, as amended by the Protocol of Washington (1992) sets forth the possibility, by a two-third vote of the member states at a special session of the General Assembly, of the suspension of an OAS member state whose government has been overthrown by force.

All these declarations and legal rules on democracy link the concept of democracy with the election of governments and other state authorities, joining democracy and human rights by the bare thread of only one aspect of political rights, the right to vote and be elected. It is certainly a start, a very basic one, but one that is too often forgotten in the Americas. Furthermore, the Americas need much more than mere declarations and legal rules to achieve the elimination of dictatorships from the region. Only the consistent application of these new rules will do the job, together with consistent work in other areas addressed in the

¹⁷AG/RES. 1080 (XXI-0/91).

¹⁸The resolution on representative democracy has been applied in Haiti in 1991, Peru in 1992 and Guatemala in 1993. For a detailed examination of the use and effectiveness of this resolution, see C. Cerna, "Universal Democracy: An International Legal Right or the Pipe Dream of the West", in 27 *N.Y.U. Journal of International Law and Politics*, No. 2, 1995, xxx.

following section. On the other hand, one may take satisfaction in the fact that, as of this writing, the region is particularly well positioned to develop a firm practice of intolerance relative to dictatorships.

The Inter-American Commission has done important and more consistent work in this area, for the problem of representative democracy is always present in the work that the Commission carries out. Already in 1973, the Commission opposed efforts by an overwhelming majority of the OAS member states to define "ideological pluralism" in terms that would make regimes such as those of Hitler, Mussolini, or Stalin compatible with the inter-American system¹⁹. And in its 1990-91 Annual Report the Commission stated its concern about "the relationship between human rights, political rights and representative democracy, a topic which the Commission has addressed quite often in the last ten years"²⁰.

The Court also has done its share by incorporating the idea of democracy into several provisions of the American Convention on Human Rights where it was not mentioned expressly, such as in Article 30 (when interpreting the word "laws" that could restrict human rights), in Article 13 (when interpreting the requirements demanded to restrict freedom of

¹⁹See document OEA/Ser.L/V/II.31, doc. 2, 1 August 1973, 3.

²⁰See OAS, *Annual Report of the Inter-American Commission on Human Rights 1990-1991* (OEA/Ser.L/V/II.79 rev. 1, doc. 12, 22 February 1991) 514. See also C. Medina, "Report on three cases against Mexico (Cases 9768, 9780 and 9828)", in *Netherlands Quarterly of Human Rights (NQHR)*, Vol. 9, No. 1, 1991, at 107 and C. Medina, "More on the electoral process in Mexico" in *NQHR*, Vol. 9, No. 4, at 483.

expression), and Article 8 (when stating that judicial remedies during a state of emergency help preserve "legality in a democratic society")²¹. For this purpose the Court has made excellent use of article 29.c of the American Convention which provides, inter alia, that the Convention shall not be interpreted to preclude rights or guarantees "derived from representative democracy as a form of government".

The technical organs of the system have exercised all their powers to instill in the minds of the rulers and the ruled the idea that democracy and human rights are indissolubly linked. This is a trend that must continue, since we are yet distant from making this notion be firmly entrenched in the region.

B. MAKING HUMAN RIGHTS EFFECTIVE THROUGH EDUCATION, RECOGNITION OF RIGHTS AND THE ESTABLISHMENT OF MINIMUM OBLIGATIONS FOR STATES

Empowering the people by educating them in their human rights is a task still pending. Neither the states in the inter-American system nor the OAS have realized the enormous importance of this project and given it the time and resources it needs. The Commission has attempted to do something in the field, but since it also has protective functions and scarce financial and

²¹See: I/A Court H.R., *The word "laws" in article 30 of the American Convention on Human Rights*, Advisory Opinion OC-6-86 of May 9, 1986, Series A No. 6, paras 23, 24, 26 and 30; I/A Court H.R., *Compulsory membership in an association prescribed by law for the practice of journalism*, Advisory Opinion OC-5-85 of November 13, 1985, Series A, No. 5, para 42; I/A Court H.R., *Habeas Corpus in emergency situations*, Advisory Opinion OC-8/87 of January 30, 1987, Series A No. 8, paras 20 and 42.

human resources it cannot do the one without impairing the other. One change that should be seriously considered is the establishment of an organ other than the Commission so as to free the Commission to perform its protective function, which, as explained above, remains essential for the development of human rights at the domestic level²².

Standard-setting within the inter-American system has been carried out quite forcefully, with major input by the Commission. At this time, the following instruments have been adopted and many of them are in force:

- the American Declaration of the Rights and Duties of Man, which by now has ceased to be merely a resolution of an international organization and become legally binding for OAS member states²³;
- the American Convention on Human Rights²⁴;

²²This idea is an old one. Professor Buergenthal proposed it already in 1973. See *Hacia una nueva visión del sistema interamericano de derechos humanos* (OEA/Ser.G, CP/doc.2828/96, Spanish version) 23.

²³See in this regard I/A Court H.R., *Interpretation of the American Declaration of the Rights and Duties of Man Within the Framework of Article 64 of the American Convention on Human Rights*, Advisory Opinion OC-10/89 of July 14, 1989, Series A No. 10, paras 42, 43 and 45.

²⁴The American Convention was signed at the Inter-American Specialized Conference on Human Rights, San Jose, Costa Rica, on 22 November 1969 and entered into force on 18 July 1978. As of April 1998 it has 25 states parties, although Trinidad and Tobago has announced its intention of withdrawing in accordance with article 78 of the American Convention. This means that it will cease to be a party to the Convention after one year of its announcement. Text of Convention in *Basic Documents*, note 7, 25.

- the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights, "Protocol of San Salvador"²⁵;
- the Protocol to the American Convention on Human Rights to Abolish the Death Penalty²⁶;
- the Inter-American Convention to Prevent and Punish Torture (the Torture Convention)²⁷;
- the Inter-American Convention on Forced Disappearance of Persons²⁸; and
- the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women, "Convention of Belem do Para"²⁹.

These instruments contain substantial human rights provisions. Although the words and the specificities vary, all contain two basic obligations: to respect and to ensure the human rights prescribed in the respective

²⁵The Protocol of San Salvador was adopted in El Salvador on 17 November 1988. It has not yet entered into force. As of April 1998 it has ten states parties. Text in *ibidem*, 69.

²⁶The Protocol to Abolish the Death Penalty was adopted in Paraguay on June 8, 1990. As of April 1998 it has 6 states parties, for each of whom it has entered into force when they deposited the instrument of ratification of accession. Text in *ibidem*, 85.

²⁷The Torture Convention was adopted in Colombia on 9 December 1985 and entered into force on 28 February 1987. As of April 1998 it has 13 states parties. Text in *ibidem*, 95.

²⁸The Convention on Disappearances was adopted in Brazil, on 9 June 1994 and entered into force on 28 March 1996. As of April 1998 it has 5 states parties. Text in *ibidem*, 107.

²⁹The Convention of Belem do Para was adopted in Brazil on June 9, 1994 and entered into force on 5 March 1995. As of April 1998 it has 27 states parties. Text in *ibidem*, 109.

treaties. The obligation to respect requires the states and their agents not to violate human rights; and in the words of the Inter-American Court, the obligation to ensure

"implies the duty of the State Parties to organize the governmental apparatus and, in general, all the structures through which the public power is exercised, so that they are capable of juridically ensuring the free and full enjoyment of human rights"³⁰.

The obligation is not fulfilled by the mere existence of a legal system³¹; it requires the state "to conduct itself so as to effectively ensure the free and full exercise of human rights"³².

The inter-American system has complied more than satisfactorily with the task of establishing a minimum of human rights and state obligations. Also, the Commission and the Court have helped by developing the content and scope of the rights and obligations in question. To give a few examples, the Commission has carried out very positive work in its country reports with regard to, *inter alia*, aspects of the right to freedom of expression which are commonly disregarded in the region³³, due process³⁴, and the rights to privacy,

³⁰I/A Court H.R., *Velásquez Rodríguez Case*, judgment of July 29, 1988. Series C No. 4, para 166.

³¹For a detailed examination of the implications of the obligation to ensure, see C. Medina, "El Derecho Internacional de los Derechos Humanos", in *Sistema Jurídico y Derechos Humanos*, note 15, 27.

³²*Velásquez Rodríguez*, note 30, para 167.

³³See *Verbitsky v Argentina* (Case 11.012, report 22/94) in *IACHR 1994 Report*, note 15, and *Martorell v Chile* (case 11.230, report 11/96)

personal integrity and security of women³⁵. In turn, the Court has developed the content and scope of several provisions in the American Convention through both its contentious and advisory jurisdiction³⁶.

in *Annual Report of the Inter-American Commission on Human Rights 1996* (IACHR 1996 Report) (OEA/Ser.L/V/II.95, doc. 7 rev., 14 March 1997).

³⁴See *Mosquera et al v Panama* (case 10.026, report 28/94) in *IACHR 1994 Report*, note 15; and *Giménez v Argentina* (case 11.245, report 12/96) in *Annual Report of the Inter-American Commission on Human Rights 1995* (OEA/Ser.L/V/II.91, doc. 7 rev., 28 February 1996).

³⁵See *X and Y v Argentina* (case 10.506, report 38/96), in *IACHR 1996 Report*, note 33; and *Martín de Mejía v Peru* (case 10.970, report 5/96), in *IACHR 1995 Report*, note 34.

³⁶Of all the judgments of the Court, perhaps the most astounding remains that on the *Velásquez Rodríguez case*, note 30, where the Court dealt with the meaning and implications of the obligation to ensure and with the phenomenon of disappearances (On the jurisprudence of the Court, see *Inter-American Court of Human Rights, La Corte Interamericana de Derechos Humanos: opiniones consultivas y fallos: la jurisprudencia de la Corte Interamericana de Derechos Humanos*, Abeledo-Perrot, Buenos Aires, 1996). Progressive advisory opinions of the Court are: the right to equal protection and discrimination of women (I/A Court H.R., *Proposed amendments to the naturalization provisions of the Constitution of Costa Rica*, Advisory Opinion OC-4/84 of January 19, 1984, Series A No. 4; the right to freedom of expression (OC-5/85, note 21; the meaning of law with regard to the requirements to restrict human rights (OC-6-86, note 21); the meaning of the expression "judicial guarantees essential for the protection of non-derogable rights" (OC-8/87, note 21, and *Judicial Guarantees in Emergency situations*, Advisory Opinion OC-9/87 of October 6, 1987, Series A No. 9); and the scope of the exception to the requirement of exhausting domestic remedies before lodging a

The recognition of rights and the establishment of minimum state obligations is an area where there has been much progress and the system should just carry on, particularly by developing the scope and content of rights through the Commission's and the Court's powers to rule on individual communications, and through the Court's advisory jurisdiction.

C. MAKING HUMAN RIGHTS EFFECTIVE: BRINGING THE MARGINALIZED INTO THE SYSTEM

The increase in human rights awareness in the world as a whole has helped to call attention to situations of gross, systematic human rights violations that have existed before but remained hidden - among others, the effect of poverty in the enjoyment of human rights, the status of women, and the situation of indigenous populations³⁷. The problem of marginalization requires more than findings in individual communications. It requires comprehensive action by both the technical and the political organs of the OAS and, in some cases, the help of other inter-American agencies such as the Inter-American Development Bank.

1. Poverty

Marginalization due to poverty has been addressed by the OAS. A recent effort is the establishment by the

complaint before the Commission (I/A Court H.R., *Exceptions to the Exhaustion of domestic remedies*, Advisory Opinion OC-11/90 of August 10, 1990.

³⁷This is necessarily a non-exhaustive list. It is to be hoped that intolerance toward human rights violations will increase and that in the future other situations will come to light. The door must be left open.

Protocol of Amendments to the Charter of the Organization of American States (the "Protocol of Managua") of the Inter-American Council for Integral Development (CIDI), whose purpose is to further cooperation among the Americas to achieve their integral development and, more particularly, to help eradicate critical poverty³⁸.

The Inter-American Commission has made a major effort to bring economic, social and cultural rights to the fore, thereby linking the enjoyment of these rights with civil and political rights and democracy. This endeavor began in an annual report in 1980 and continued with the examination of these rights in some countries by developing indicators to assist in assessing state conduct in this field³⁹. More recently, the Commission has been instrumental in the adoption in 1988 of the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights, also known as the Protocol of San Salvador⁴⁰.

The Commission must continue to point out that some economic, social, and cultural rights are, indeed, rights, enshrined in the American Declaration. It also must continue to emphasize the effect poverty has on all

³⁸The Protocol of Managua entered into force on January 29, 1996.

³⁹See OAS, *Report on the situation of human rights in the Republic of Guatemala* (OEA/Ser.L/V/II.53, doc. 21 rev. 2, 13 October 1981) at 127; OAS, *Report on the situation of human rights in the Republic of Nicaragua* (OEA/Ser.L/V/II.53, doc. 25, 30 June 1981) at 151; OAS, *The situation of Human Rights in Cuba, Seventh Report* (OEA/Ser.L/V/II.61, doc. 29 rev. 1, 4 October 1983).

⁴⁰See note 25.

human rights. In many resolutions and declarations, the OAS political organs have expressed the will to begin putting an end to poverty, and one cannot blame them for falling short on that, considering the enormity of the task. But implementation remains a problem and needs to be solved before human rights can fully take root in the region.

2. Women

The marginalization of women from democracy and from the full enjoyment of their human rights also has been constant in the region, particularly in Latin America. Women have been subjected to discriminatory treatment for a very long time, including violations of their rights to life, to personal integrity, and to privacy, caused by the action or inaction of the state, and they have been excluded from political participation as well⁴¹. In 1991, the OAS General Assembly recommended that the Inter-American Commission on Human Rights pay attention to the status of women⁴², which the Commission

⁴¹See T. Valdés and E. Gomariz (coordinadores), *Mujeres Latinoamericanas en Cifras*, Tomo Comparativo, Instituto de la Mujer, Ministerio de Asuntos Sociales de España and Facultad Latinoamericana de Ciencias Sociales (FLACSO), Madrid, 1995. See also IACHR, *Annual Report of the Inter-American Commission on Human Rights 1992-1993* (OEA/Ser.L/V/II.83, doc. 14 corr.1, 12 March 1993) Chapter V, section V; and the statistics on gender disparity in *PNUD 1997 Report*, note 11, at 38 and tables 2.8 and 2.9, at 40-41. The PNUD 1997 report states, for example, that in developing countries "there are 60% more women than men among illiterate adults, female enrolment even at the primary level is 13% lower than male enrolment, and female wages are only three fourths of male wages", 39, and that "gender inequality is strongly associated with human poverty", 39.

⁴²AG/RES. 1112 (XXI-0/91).

had ignored in more than forty country reports prepared since 1960⁴³. Complying with the Assembly's recommendation, the Commission prepared a section of its 1992-1993 Annual Report so as to show the existence of discrimination against women in all fields⁴⁴ and appointed a Special Rapporteur on women who would direct a study on the discrimination of women in the region⁴⁵. Progress reports with scant information have been included in the 1995 and the 1996 annual reports. A questionnaire, finalized in 1996, was distributed among OAS member states and inter-governmental and non-governmental organizations⁴⁶. Also, the Commission has begun to include the examination of women's human rights in its country reports⁴⁷. The combination of including the situation of women in country reports and preparing thematic reports (one on violence against women - including rape - is a priority), perhaps under the terms of reference of the Special Rapporteur, may be effective in ending discrimination against women⁴⁸.

⁴³An anomaly in this consistency is Chapter X of the Commission's Report on El Salvador issued in 1978, where the Commission informs about a communication denouncing various forms of discrimination against women. The Commission confines itself to giving notice thereof and it seems that the communication received no further attention.

⁴⁴See *IACHR 1992-1993 Annual Report*, note 41, at 262.

⁴⁵See *1995 Annual Report*, note 34, at 237.

⁴⁶See *1995 Annual Report*, note 34 and *1996 Annual Report*, note 33, at 751-754.

⁴⁷OAS/IACHR, *Report on the Situation of Human Rights in Ecuador* (OEA/Ser.L/V/II.96, Doc. 10 rev. 1, April 24, 1997) and *Report on the Situation of Human Rights in Brazil* (Brazil Report) (OEA/SER.L/V/II.97, Doc. 29 Rev. 1, 29 September 1997).

⁴⁸I think that the promotion of non-discrimination on

Paralleling these development, women in the Americas struggled successfully for the 1994 Inter-American Convention for the Prevention, Punishment and Eradication of Violence Against Women, which defines the state obligations in this respect more clearly and grants to the Commission the power to examine communications alleging violations of the rights in its Article 7. The Commission has yet to receive any communication based on that Convention, however.

3. Indigenous peoples

Indigenous populations present a different problem for the inter-American system. They are discriminated against in the enjoyment of all human rights, they do not enjoy the rights that other international instruments grant members of minorities⁴⁹, and they appear to wish some amount of autonomy, varying in degree depending on the group.

The Commission has been more forthright regarding the problems of indigenous people than those of women. It has included an examination of their problems in its country reports⁵⁰, has prepared special reports⁵¹, and

the basis of gender should also reach the OAS organs themselves, because that would give a positive signal to women that the OAS and the OAS member states really mean what they say. At this time, there is not one woman either in the Commission or the Court.

⁴⁹Article 27 of the International Covenant on Civil and Political Rights (ICCPR) grants members of minorities the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, and to use their own language. There is no similar provision in the American Convention.

⁵⁰See S. Davis, *Land Rights and Indigenous Peoples*.

when asked examined individual communications⁵². In carrying out these activities, the Commission has advanced the idea that indigenous populations have special rights⁵³, and urged that they not be discriminated against⁵⁴. Recently, the Commission has been engaged in drafting an American Declaration on the Rights of Indigenous Peoples⁵⁵, submitted to the OAS

The Role of the IACHR, Cultural Survival Inc, 1988. See also IACHR, Report on the Situation of Human Rights in the Republic of Guatemala (1981 Guatemala Report) (OEA/Ser.L/V/II.53, doc. 21 rev. 2, 13 October 1981); IACHR, Fourth Report on the Situation of Human Rights in Guatemala (Fourth Guatemala Report) (OEA/Ser.L/V/II.83, doc. 16, 1 June 1993; and IACHR, Brazil Report, note 47.

⁵¹See IACHR, *Report on the Situation of Human Rights of a Segment of the Nicaraguan Population of Miskito Origin* (OEA/Ser.L/V/II.62, doc. 10 rev. 3, 1983 and OEA/Ser.L/V/II.62, doc. 26, 1984).

⁵²See Resolution 12/85 of March 5, 1985 in Case 7615, lodged against Brazil by various NOGs representing the Yanomami population

⁵³See, for example, *OAS/IACHR, Annual Report of the Inter-American Commission on Human Rights 1989-1990*, OEA/Ser.L/V/II.77 rev. 1, Doc. 7, 17 May 1990, at 178, where the Commission speaks about the right of these peoples to own property and to live on their ancestral lands, to protection under the law from plundering of forests in the areas they lived in or owned, the settlement of peasants from outside the community on disputed land with the aim of diminishing the community's rights, and their right to preserve their religion and belief.

⁵⁴See note 50.

⁵⁵See text of the proposed American Declaration on the Rights of Indigenous Peoples in *1996 Annual Report*, note 33. The draft goes much further than other international law instruments: it speaks, for example, of collective rights (article II.2), sets forth their entitlement to restitution of land (article VII.2) and to environmental protection (article XIII);

General Assembly and the Permanent Council. The Commission strove unsuccessfully to have the Declaration approved at the General Assembly's 1998 ordinary session. Perhaps it will be approved in 1999.

The Commission has made ample use of its possibilities to address the problems of indigenous populations. It is now up to the OAS political organs to complete this task.

**THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS AND
RECALCITRANT STATES: SOME SPECIAL PROBLEMS**

Governments said to be democratic are nonetheless reluctant to admit their human rights failures and they resort to various devices to diminish the supervisory powers of the system. They do not seem to realize that, between a truly democratic state and one whose government has been overthrown by force, there are many shades of governance that cannot remain outside the system. It is no light matter that, though all governments in the region are now elected, 70% of the 800 cases pending at the Commission deal with the rights to life and to personal integrity⁵⁶, a fact that demonstrates that the region remains far from reasonable compliance with international human rights standards and obligations. The Commission has sought to deal with these new developments in its preparation of country reports and in its examination of individual communications.

finally, article XV speaks of the right to self-government, with regard to *inter alia*, culture, religion, education, information, media, health, housing, employment, social welfare, economic activities, land and resource management, the environment and entry by non-members.

⁵⁶See "Palabras del Presidente", note 5, at 157.

1. Reports

The Commission began preparing reports on the situation of human rights in specific states very early in its existence⁵⁷, and it has exercised its power depending on the political atmosphere within the OAS. It has been no easy road for the Commission⁵⁸, and the Commission's latest encounters have been prompted by the inclusion in its annual reports, now a usual practice, of a section examining the situation of human rights in states in which there is an elected government. This has not been to the liking of these states; they have responded with procedural objections, arguing that the Commission does not give them the opportunity to react before publishing the annual report⁵⁹, and with objections of substance, saying that, on the one hand, the Commission should concentrate on situations of gross, systematic violations, understanding these terms to refer only to situations in states where a "proper" dictator is ruling⁶⁰ and, on the other hand, it should

⁵⁷See IACHR, *Report on the situation of human rights in Cuba* (OEA/Ser.L/V/II.4, doc. 30, 1962).

⁵⁸For a description of the adverse circumstances which the Commission has faced, on and off, see C. Medina, *The Battle of Human Rights*, note 1, Chapters IV and VI.

⁵⁹See the objections of the delegates of El Salvador, Peru and Nicaragua in the proceedings of the meeting of the Legal and Political Affairs Committee of the OAS in: *Vigésimo Cuarto Período Ordinario de Sesiones, 6 de junio de 1994, Belem, Brasil, Transcripción de las actas de las sesiones de la Comisión de Asuntos Jurídicos y Políticos celebradas los días 9, 12 y 26 de abril de 1994* (Versión no editada) (Punto 19 (b) del temario) (OEA/Ser. P, AG/doc. 3078/94 add. 1, 17 mayo 1994, Textual).

⁶⁰The comment is so often made that Pedro Nikken has felt compelled to reject the notion that the system was created to deal with dictators only.

not discriminate against certain states but should present an overall picture of human rights in the region⁶¹.

The Commission did not react to the procedural objections of the states until recently. In a meeting of the OAS Committee on Legal Affairs, it announced that it had amended its Regulations so that states would have the opportunity - prior to the publication of the Commission's annual reports - to comment on the contents of the section where the status of human rights of some countries is examined. The amendment adds a paragraph to Article 63 (h) of the Regulations, which deals with the Commission's annual report, setting forth that the Commission will transmit a copy of any report on the human rights situation in a country to the state concerned, so that the state can comment on it within a month. The Commission retains, however, the decision on the content of the report and its publication⁶². The Committee and some states expressed their satisfaction

See "Perfeccionar el sistema interamericano de derechos humanos sin reformar el Pacto de San José", in *El futuro del sistema interamericano*, note 5, at 25, 30-31.

⁶¹See the reaction of the OAS Committee on Legal Affairs and of states in Observaciones y recomendaciones del Consejo Permanente sobre el Informe Anual de la Comisión Interamericana de Derechos Humanos (OEA/Ser.P, AG/doc.3692/98 corr. 1, 27 May 1998), Annex I (Informe de la Comisión de Asuntos Jurídicos y Políticos con relación a las observaciones y recomendaciones sobre el Informe Anual de la Comisión Interamericana de Derechos Humanos), p. 12, and Annex III (Actas textuales de la reunión de la Comisión de Asuntos Jurídicos del 23 de abril de 1998), p. 37.

⁶²Amendment approved by the Commission in its 97th Session (29 September-17 October, 1997)

at this announcement⁶³

As a consequence of the non-procedural criticisms, the Commission established criteria for deciding when it should include an examination of a specific country situation in its annual report⁶⁴. As announced in its 1996 Annual Report, the criteria are: (a) states ruled by non-democratically elected governments; (b) states where the free exercise of the rights in the American Convention or the American Declaration have been totally or partially suspended; (c) states where there exists reliable evidence that gross, systematic violations of human rights in the Convention, the Declaration, or other human rights instruments are being perpetrated (examples given by the Commission include extra-judicial executions, torture, and forced disappearances); and (d) states in transition from any of the situations described above. Furthermore, probably to appease states, the Commission announced that it will develop further criteria to expose measures taken by states for the improvement of human rights within their jurisdiction⁶⁵.

The criteria established by the Commission for deciding which countries with human rights problems should be included in its annual reports are an unnecessary limitation of its powers. The apparent equation of reports with gross, systematic violations; with dictatorship (understanding by dictator the classic ruler who has come to power through a coup d'etat); with

⁶³See Consejo Permanente, Observaciones, note 59, Annex I, p. 12, and Annex III, p. 32.

⁶⁴See C. Medina, *The role of country reports*, note 1, 470.

⁶⁵See IACHR, *1996 Annual Report*, note 33, 650.

the transition from dictatorship to democracy; or with violations that usually happen only in dictatorial and transitional regimes seems to omit a variety of situations that are occurring in the region at this very time. Consider, for example, states where due process is not established properly in the domestic legal order (as in trials for terrorism in Peru and their devastating effect on many other human rights); or states where ill-treatment of detainees is habitual; or in states where there is massive discrimination against women. Would the Commission have the power, according to its own criteria, to prepare a report to deal with such problems, irrespective of whether the country has not formally suspended any human right? Indeed, would these instances be considered "gross, systematic violations"?

The limitation of the Commission's powers appears more severe still if the criteria are applied to country reports or to reports of Special rapporteurs. And yet this would seem the proper step to take, both to give some satisfaction to states and to have some consistency.

The criteria set forth by the Commission need to be updated and refined, including leaving aside most of political considerations which should not be the Commission's concern. Nothing should detract the Commission from using its reports - country reports, thematic reports, or sections in its annual reports- whenever needed. The task of removing the major stumbling block constituted by the attitude of states with regard to reports should be carried out by other, more human rights-oriented states. It is high time the Commission was permitted to perform its functions without having to withdraw and advance depending on the states' mood.

2. Individual communications. An attempt to go European.

Making democratic or quasi-democratic states understand that they have committed themselves to international scrutiny relative to their human rights performance is an extremely difficult task. Accustomed to the inter-American system reacting to the worst human rights violations, and accustomed as many of them were to living in dictatorships, they reject the notion that the Commission can spend its time examining individual communications on matters that do not seem as serious as summary executions, disappearances, and torture for political reasons.

The position of these states has been further fueled by two predicaments: first, the difficulty the Commission has had in adjusting to its new role after the entry into force of the American Convention and the establishment of the Court, which requires strict compliance with clear and previously known procedural norms⁶⁶; second, the fact that the Court's Rules of

⁶⁶See C. Medina, "The Right of Individual Complaint before the Inter-American Commission on Human Rights: Some Problems of Law and Practice", in C. Medina (ed.), *Training Course on International Human Rights Law for Judges and Lawyers of South America. Selected Lectures*, Netherlands Institute of Human Rights, 1992, 158, 166. For a recent example of the informality of the Commission and its negative consequences for those seeking redress for human rights violations, see the Court's decision accepting a preliminary measure interposed by Peru in the Cayara case (actually four cases before the Commission: 10.264, 10.206, 10.276 and 10.446) on the grounds that the case had been presented by the Commission before the Court after the term of Article 51 of the Convention had expired (1993 Annual Report of the Inter-American Court of Human Rights (OEA/Ser.L/V/III.29, doc. 4 10 January

Procedure and its practice have placed the Commission as a party to the case before the Court (in my view incorrectly and contravening the American Convention) thereby jeopardizing the Commission's impartiality vis-à-vis the states⁶⁷. These predicaments may explain the direction that the criticisms of the individual communication mechanism are taking.

Numerous suggestions have been made to change the system. Two are especially worthy of attention.

The first is a proposal to establish "a specific jurisprudence of deference to domestic proceedings"⁶⁸ in the handling of individual cases before the Inter-American Commission. The suggestion addresses two points, although in an essay of the OAS Secretary General the distinction is blurred under the heading "[c]larifying a reviewing standard".

The first point is the acceptance of the facts of a case as established by domestic courts. In this regard, the Secretary General's essay seems to ignore the reality of our region, where, in significant numbers, judicial proceedings fail to comply with the requirements of due process set forth in Article 8 of the American Convention on Human Rights and also ignore what the Commission does when examining a case. The

1994). On the Cayara case, see C. Medina, *Inter-American System, Human Rights News*, in *12 NQHR*, 461 (1994).

⁶⁷See C. Medina, "Reflections on a Joint Venture", note 2, 439, 459.

⁶⁸C. Gaviria, "Toward a new vision of the Inter-American Human Rights System", (*New Vision*) in *The Journal of Latin American Affairs*, Vol. 4, No. 2, at 9.

essay recommends that the Commission define a "clearer standard of review"⁶⁹ of the evidence presented before the domestic courts, as if that were necessary. If one looks at the Commission's practice, one can see that the Commission does not ever "weigh" evidence. What it does, and what it is bound to do, is to examine whether the requirements of due process have been complied with: *inter alia*, was the court impartial and independent? was there equality of arms? was there a clear, flagrant denegation of justice? If the answer to any of the questions is in the affirmative, the facts as established by domestic courts cannot be the basis for the Commission's finding, since they were not established according to article 8. Yielding to domestic courts in such circumstance would constitute an abandonment of the Commission's duties.

The second point is explained by reference to the European Human Rights Commission's doctrine of the "margin of appreciation", meaning, in general terms, "that the state is allowed a certain measure of discretion, subject to European supervision, when it takes legislative, administrative or judicial action in the area of a Convention right"⁷⁰. The doctrine is not accepted without criticism; among other things, it is very difficult to decide precisely when and how widely to apply it in particular cases⁷¹. Stronger criticism was expressed at a seminar on the system held in December 1996, where Professor van Hoof observed that the doctrine's use is "incompatible with a human rights

⁶⁹*Ibidem*, 10.

⁷⁰See D. J. Harris et al, *Law of the European Convention on Human Rights*, Butterworths, England, 1995, 12 (My underlining).

⁷¹See *ibidem*, 15.

system", and Professor Trindade indicated that the doctrine "could be questioned not only on substantive grounds, but on procedural grounds as well"⁷². But the way this idea is being discussed relative to the inter-American system and the definition it is being given by the OAS Secretary General give real cause for anxiety. The Secretary General speaks of "a discretionary margin whereby the regional Court views a particular issue through what we might call that country's cultural, social and political 'prism'"⁷³. One panelist at a seminar on the inter-American system held December 2-4, 1996, suggests that "the Commission and other bodies might exhibit more sensitivity to the delicate nature of new democracies, perhaps by explicitly using the doctrine of margin of appreciation"⁷⁴. These viewpoints seem to contradict the fact that ultimate supervision always should rest with the Commission, and, maybe more importantly, that suggestions of deference to culture are a direct attack upon the basic premise that human rights are universal. Actually the invocation of the doctrine of the margin of appreciation is more than an attempt "to go European" without the conditions existing in Europe⁷⁵; it pretends to go further than the Europeans. Thus it is desirable that the idea be abandoned, again with the help of OAS human rights-oriented states.

⁷²See OAS/Ser.L/V/II.95, Doc. 28, March 11, 1997, (*Seminar*), 60 and 66-67.

⁷³*New Vision*, note 68, 9.

⁷⁴Words of Dr. Patrick Robinson in *Seminar*, note 72, 20.

⁷⁵The new state parties to the European Convention, lacking a tradition of democracy and respect for the rule of law, will pose considerable stress on the system since it will difficult to grant them the margin of discretion given to the older parties to the Convention.

The second suggestion that is worthy of attention is that of creating "a special operational linkage with domestic judicial authorities" that would consist, among other things, of giving "fiscalías" or "defensorías" (state organs of an OAS member state) "expedited access to our regional system, so as to bolster their own arsenal of measures to combat human rights abuses domestically". The "fiscalía", or an "ombudsman" unable to achieve satisfactory progress domestically, could present their case to the inter-American system with a relatively complete fact-finding and testimonial record⁷⁶. In contrast, the individual complaint mechanism cannot be used to create a "special operational linkage with domestic judicial authorities" without causing great distortion. Promotional and advisory services are the suitable functions to achieve this objective. The *raison d'être* of the individual complaint mechanism is to examine the conduct of a state relative to a specific person to decide whether the conduct is compatible with the international obligations set forth in the American Convention. With this in mind, a suggestion to create "a special operational linkage with domestic judicial authorities" seems to put the mechanism off course. In the first place, it is difficult to discern what sort of supervision of state conduct this would be, where two organs of the state come before a regional organ to settle a dispute concerning the human rights of an individual. Secondly, if the state is acting in good faith, it will be willing to solve the matter directly at the domestic level, a swifter and more efficient method to deal with human rights violations. On the contrary, if the state's government, legislature or courts are not acting in good faith to respect and

⁷⁶*New Vision*, note 68, 18.

ensure human rights, it is difficult to see how such a state would be willing to establish another domestic organ with the power to accuse before the Commission (an international supervisory body) the state's legislature, government, or courts. To function, this proposal would imply the creation of some form of supranational supervisory system. As it is plain to see, the Americas are a long way from being able to achieve such overriding integration.

SOME CONCLUDING REFLECTIONS

At the beginning of this paper, the ultimate aim of an international human rights system was said to be the strengthening of democracy and human rights in national laws and practices and in national civil societies. After examining some selected aspects of the inter-American human rights system, it could be concluded that democracy has been strengthened in the region, although it is impossible to measure how much of this is due to the OAS human rights system, and therefore one can only presume that OAS actions in this field, particularly those of the Commission and the Court, have had a bearing on the current situation. The OAS political organs have had periods in which actions amicable to human rights have been undertaken, such as Resolution 1080 of the General Assembly and the amendment of article 9 of the OAS Charter. Even though these actions are the result of changes within the OAS member states, it can be safely assumed that they will have an effect upon the future development of democracy. So far I am speaking of democracy in a restrictive sense, that is to say, a system of government in which authorities are elected by secret, universal suffrage and are accountable in some way to the people, or, in other words, as the system of government which does not

constitute a dictatorship. Taken in a more ample sense, the task of building up democracy in the states of the region is far from complete. A significant number of inhabitants in the Americas do not have any possibility of participating in the shaping of society, although they have the right to vote, because in order to participate individuals need the enjoyment of all their human rights, and much too often human rights in states of the region are too narrowly defined, or too broadly restricted, and state agents frequently ignore their very existence.

Democracy in its ample sense is developed by the improvement of human rights; this in turn is helped by setting international human rights standards and establishing minimum obligations for states. The OAS political organs have been progressive in this regard, and the OAS human rights supervisory organs have helped these developments in an important way: the Inter-American Commission has placed an adequate accent on the development of democracy within states and has attempted to develop the content and scope of human rights; the Court, in turn, has exercised both its jurisdictions to support the Commission's efforts and to develop human rights in the American Convention further and define them more precisely.

Making human rights effective, though, requires that they be known by individuals. Although a valid and forceful argument exists to maintain that enjoyment of human rights results in the improvement of society as a whole and therefore it is beneficial to state authorities, it cannot be forgotten that it is for human beings that human rights were established, and consequently the main effort to achieve progress in the enjoyment of human rights will necessarily have to come

from human beings themselves. This is what experience teaches us. This being the case, it is essential that they learn of the existence of these rights and of the mechanisms available to claim them whenever a violation occurs. Human rights education, the most important and effective avenue to accomplish full enjoyment of human rights, has up to now been deficient. The OAS has vested the Commission with the task of promoting human rights, within which the educational activities are subsumed, but has not given it the resources needed for carrying it out, since the Commission has many and varied functions and few human and financial resources. Nor has the OAS considered that perhaps education should be the responsibility of a different organ. In my opinion, the Commission has been unable, and not unwilling, to promote human rights in the region through education and the OAS, in the main, has not paid attention to this field. Without significant advancement in this field, international standard-setting and human rights supervision will bear insufficient and transitory fruits.

Also important for a true democracy is the task of bringing the marginalized into the human rights system, both at a national and international level. In this area there has been progress as marginalized sectors have succeeded in bringing their problems to the fore.

The OAS has been so far unable to make an impact in the problem of poverty, but at least the Commission has succeeded in raising the status of economic, social and cultural rights, and this may prove instrumental for further advancement. For this, the Commission should incorporate the issue of these rights in all its country reports in a consistent manner, and in interpreting the obligation to ensure human rights under article 1 of the

American Convention, it could attempt expanding civil and political rights to include some elements of economic, social and cultural rights. In the latter task, the Court might also use both its jurisdictions when it receives the appropriate case or request for an advisory opinion.

Women, until very recently absent as subject of and/or participants in the human rights debate, have managed both to make the issue of women an important one within the OAS and to achieve some success in having their voices heard in some international and national circles. Progress in this area will be swift. Again here the Commission should examine the problem of women *de jure* and *de facto* discrimination invariably in all its country reports and give support to the Special Rapporteur on Women.

Human rights problems of indigenous populations have benefitted greatly from the major efforts carried out by the Commission, but they present delicate political issues, and it is probable that the human rights supervisory organs will only be able to address discrimination against these populations. The solution to other claims requires a political decision that goes beyond pure human rights considerations.

For the human rights supervisory organs to continue their input into the task of improving human rights, it is imperative that states behave in good faith and in accordance with their international obligations. No matter how committed the members of the Commission and the Court are, their performance will not accomplish the desired results unless it is supported by the OAS member states. Some recent developments suggest that not all OAS member states are willing to do this. Furthermore,

the Organization itself, as evinced by the Secretary General's position with regard to the work of the Commission, seems to have lost sight of the meaning and objectives of the inter-American human rights system. Human beings in the region, and the OAS human rights supervisory organs, have still a long and arduous task before them.