



**HUMAN RIGHTS CLINIC**  
THE UNIVERSITY *of* TEXAS SCHOOL *of* LAW

**Maximizing Justice,  
Minimizing Delay**  
**Streamlining Procedures of the  
Inter-American Commission on Human Rights**  
**December 2011**





**MAXIMIZING JUSTICE, MINIMIZING DELAY:  
STREAMLINING PROCEDURES OF THE INTER-AMERICAN  
COMMISSION ON HUMAN RIGHTS**

**DECEMBER 2011**



# **Executive Summary**

The Inter-American Commission on Human Rights (the “Commission” or the “IACHR”) has a multiplicity of functions, including human rights promotion and an adjudication system. The Human Rights Clinic of the University of Texas School of Law (the “Clinic”) strongly believes the Commission is an important and essential body, which carries both trust and faith, and often provides the only space where people can seek justice for human rights violations. The Clinic acknowledges the Commission’s positive impact as both promoter and protector of human rights in the region. However, over the past two decades, the Commission has faced an increased influx of more complex petitions that has not been equated with a proportional budget to meet its variety of responsibilities. As a result, the Commission now has a large backlog of cases at various steps in the process, and petitioners face long wait times. In recognition of the positive impact of the Commission, this Report, prepared by the Clinic, sets forth to address this problem by making recommendations to strengthen the Commission.

## **I. The Clinic’s Methodology**

To analyze the Commission’s adjudicatory procedures the Clinic created a database chronicling the dates of each public decision on admissibility, friendly settlement, and merits from 1996 to 2010. The Clinic utilized that database to determine the length of time between each step in the procedure and the overall length of time for the entire process. The Clinic also compiled a similar database with all of the decisions of the Inter-American Court of Human Rights (the “Court”). The Clinic has been engaged in constructive dialogue with the Commission by interviewing several members of the staff, and submitted an earlier draft report to the Secretariat of the Commission. Based on the comments received and additional research, the Clinic produced a list of questions for the Commission and received responses in October 2011. Some of the Commission’s answers were based on publically available information, however, other information came from the Commission’s internal sources and thus the Clinic is unable to calculate and corroborate these statistics. Therefore, there may be some discrepancies between the Clinic’s findings and the Commission’s answers. The Clinic has highlighted any discrepancies and explained them where necessary throughout the report.

## **II. The Clinic’s Findings**

The Clinic has been encouraged by the active efforts of the Commission in addressing the problems within its own procedure. Most notably, through our dialogue with the IACHR and

through the Commission's own publications, such as the Strategic Plan, the IACHR has demonstrated its determination to minimize the delay for petitioners' access to justice. In particular, the Commission has recognized that there is a backlog of petitions, that its technology should be maximized to ensure efficiency, and that there is an imminent need for extra funding.

The Clinic has found three general areas of concern. Firstly is the Commission's lack of funding. Second is the Commission's structural organization of its procedure by dividing the admissibility and merits phases. Third is within the Commission's own processes of handling petitions and cases.

1,300–1,500 petitions are submitted annually, of which only ten to thirteen percent are deemed receivable (pre-screening). The Clinic's research and analysis of the database show that, overall, there is a large backlog of cases, the Commission's procedure is frontloaded, and petitions and cases have long wait times. Each year, between 130 and 225 petitions are added to the Commission's docket; however, the highest number of decisions made by the Commission in a single year was 133 in 2010. Thus, despite noteworthy progress, more petitions and cases are being added to the backlog every year. The Commission estimates that each year there is a steady increase of about 10% in the number of petitions received. Further, the database shows that the Commission makes considerably more admissibility decisions than any other type of decision. For example, less than seven percent of the Commission's decisions in 2010 involved a merits or friendly settlement decision.

This increased backlog has created long wait times for petitioners. Using the database of publicly available reports, the Clinic determined that it takes an average of **six and a half years** from the initial submission of a petition to the final merits decision. Within that, it takes more than **four years** for a decision just on admissibility. The Commission's answers suggest the wait times are even longer. The Commission states the average length of proceedings of matters that have reached the admissibility stage and are awaiting decision (which includes the time in initial evaluation and admissibility) is 70 months. Furthermore, the average length of matters that have reached the merits stage (which includes the time in initial evaluation, admissibility and merits) and are awaiting decision is 86 months. The Clinic's findings demonstrate that the average wait time for each type of decision has increased progressively for the last fifteen years. Part of the increase in the wait times could be attributed to the fact that the Commission is currently dealing with a backlog of old petitions. The initial data suggests that the reforms to the Rules of Procedure in 2000 and 2009, as well as the reorganization of the Executive Secretariat in 2008, have not yet reduced the length of time from the submission of petitions to their final resolution. The Clinic believes that the 2000 reforms dividing the procedure into admissibility and merits is one of the main factors leading to the current backlog and delay. It shifted the focus of the Commission to the admissibility stage. The change created additional steps by requiring the Commission to draft independent admissibility reports, discuss them, modify, approve and process them. The Clinic database shows the noticeable damaging effects of this decision in terms of the duration of the procedure and the backlog of cases.

For example, the Clinic notes that in report number 123/10 (Gerson Jairzinho González Arroyo and others), the Commission stated that the duration of sixteen years for the criminal trial to reach the admissibility stage constituted an unwarranted delay. However, at the time the

Commission issued this statement, the petitioners had also been waiting seventeen years for a separate decision on admissibility by the Commission. The Clinic finds that seventeen years of wait time is unjustifiable at the national level or at the Commission. The Commission has taken many steps to shorten the length of procedure and reduce the backlog. Notably, the Commission's recently published 2011–2015 Strategic Plan identifies specific, ambitious goals and outlines plans of action for their achievement. As indicated in the Strategic Plan, one of the biggest obstacles to decreasing delays and reducing the backlog is the need for additional resources, a claim that the Clinic fully shares and endorses. However, the Strategic Plan fails to give enough consideration to structural and procedural problems that, if addressed, could significantly reduce the length of procedure. The Clinic recognizes the Commission's positive steps in the right direction but proposes that the Commission implement further measures to deal with the challenges in its procedure that are not purely dependent on an uncertain increase of its funds.

### **III. Framework of Effectiveness and Efficiency for a Human Rights Body**

The recommendations the Clinic propose rely heavily on the ability of the Commission to be both effective and efficient as a human rights body. The Clinic has examined the principles of effectiveness and efficiency and acknowledges that the Commission must find the right balance between the two. The Clinic recognizes multiple effectiveness goals for a human rights body, particularly for an institution like the Commission with its wide range of mandates, such as State compliance with its decisions, relevance of case proceedings to domestic actors, and the creation of widespread awareness of human rights issues or individual access to justice and resolution of their cases, as well as drawing attention to traditionally marginalized issues and groups.

These are tensions between effectiveness and efficiency. The Commission must not solely prioritize the efficient and expedient resolution of cases. Among other elements, the IACHR must work together with States to engage in a productive dialogue and promote their compliance with its decisions. Sometimes the Commission needs to adopt decisions that delay the resolutions of cases in order to guarantee its effectiveness. Notwithstanding this, the Clinic strongly believes that the Commission's ability to resolve cases in a timely manner is not an onerous recommendation, especially as it is essential to being both efficient and effective.

The Clinic also emphasizes several aspects of efficiency that can help the Commission reduce backlog: the elimination of waste (reducing duplicative processes), structural optimization that simplifies the entire process by implementing relatively uniform lengths of time for each step; process optimization that utilizes existing technology and allows job specialization; and performance measurement and management.

#### **IV. Potential Lessons Learned from Other Human Rights or Adjudicative Bodies and Courts**

The Clinic also looked to the processes of other courts and human rights and adjudicatory bodies for guidance, while recognizing the differences between each body. The experiences of other adjudicatory bodies are presented not to contrast their performance with the Commission's. To the contrary, the functioning of other systems could serve as a pool of ideas from which the Commission may take successful measures, adapt some to its mandate and rules, and reject others. The Clinic is also aware that some of the bodies it researched face their own delays, backlog and problems. The Inter-American Court was particularly instructive since its combined decisions on preliminary objections, merits, and reparations have enabled it to decrease its time despite an increased caseload within a more or less stable budget from the OAS. The European Court of Human Rights faces similar problems as the Commission, although greater in scale, and is dealing with its caseload using significant reforms, some of which may be tailored to the Commission's procedure. Additionally the United States Courts have addressed an increased caseload with the use of new technology, the reduction of oral arguments, the simplification of the way they issue decisions, and an increased emphasis on settlement. The United States Custom and Immigration Services ("USCIS") have utilized an online system where petitioners can track the progress of their case status, thereby increasing transparency.

#### **V. Conclusions**

The Clinic decided to create a database as there was limited publicly available and systematized information. However, there has since been the implementation of the Commission's Strategic Plan and a more open attitude of the Commission. The Clinic has entered into fruitful dialogue with the Commission, which the Clinic commends, regarding the transparency of such a prominent international human rights body.

The Clinic recognizes the effects on the Commission caused by a lack of sufficient resources and how this limits its capacity to act. It understands that despite these limitations, the Commission has taken positive steps towards resolving some of these issues and maximizing its own efficiency and effectiveness. The Clinic believes that the implementation of the proposed recommendations will build on and complement most of the Commission's own reforms. Furthermore, the recommendations will not only help to reduce backlog, but also to minimize unwarranted delays in the system to fully allow petitioners' access to justice. The Clinic strongly believes that the Commission should implement various structural and procedural changes outlined within this report to ensure maximum efficiency and effectiveness of the Commission. This is in addition to the 2011-2015 Strategic Plan which relies heavily on increased funding. In particular, the Clinic urges the Commission to revise its split admissibility and merits phase, embrace the use of technology within its processes, and maintain the highest level of transparency throughout its work. It is essential that incidents such as waiting 17 years for



merely an admissibility decision do not occur and justice is provided promptly for victims like Gerson Jairzinho Gonzalez Arroyo.

# Recommendations

The slow process, particularly for the final resolution of cases, has serious implications for the effectiveness of the Commission and the petitioners' access to justice, a purported main goal of the Commission. Noting the obstacles the Commission faces, the Clinic presents a set of recommendations for the IACHR to improve its procedure.

## A) Financial Resources

- The OAS should increase the funding of the Commission.
- The IACHR should continue to implement a targeted fund-raising campaign with clear and measurable goals of reducing its backlog.
- The Commission should continue to develop transparency policies in terms of how it uses its financial resources.
- The Commission needs to develop and implement changes that are not necessarily dependent on additional funds.

## B) Internal Changes

### 1. Performance Management

- The Commission should determine reasonable times to process a petition or case in each stage and where to allocate resources.
- The IACHR should examine its different regional units to determine the practices that are most efficient, and then replicate them throughout the Commission.
- The use of the Petition and Case Management System (PCMS) and the Document Management System (DMS) should be maximized by the Commission.
- The metadata from the PCMS, DMS and the Clinic's findings should be used to determine the average time for disposition of cases at any given phase.

### 2. Integration of the so-called 'Registry' and its approach to the rest of the Commission

- The IACHR should expand the methodological approach, in terms of standardization and the establishment of clear temporal guidelines, used by the Registry for the initial evaluation and processing of petitions and cases to the other parts of the procedure.
- The Commission should redistribute the resources allocated to the Registry throughout the Executive Secretariat.
- The term "Registry" should be changed to "New Petitions Unit" or a similar name in order to more clearly identify tasks performed by the Executive Secretariat.

### 3. Technology

- The databases should be expanded by instituting a program that digitalizes older petitions/cases and includes them in the DMS.

- The databases of the IACHR should be made publicly accessible so the parties to the petitions can both check their status and submit additional documents and information online.
- Sustained and permanent staff training on how to use the databases should be promoted.

#### **4. Petitions Intake System**

- The Commission should encourage the wide use of its online petition system.
- The User Portal (PPP) rules should be changed to allow the use of the online petition system, without the need for an additional paper version, to eliminate duplicate waste.
- Paper petitions from those without or with limited Internet access, should continue to be permitted.
- The Commission's Rules should be published within the online petition system with an explanatory note showing examples of clearly unacceptable cases.

#### **5. Reduction of Duplication**

- The Commission should continue to eliminate any duplicate steps in its process.

### **C) New or revamped practices that may require Rules of Procedure changes**

#### **1. Combined Commission Decision**

- The Commission should amend its Rules and combine the admissibility and merits decisions into one to notably reduce the backlog and delay.

#### **2. Consistent Application of the Rules to Speed Up the Process**

- The IACHR should more frequently apply all the Rules that allow it to speed up the process.
- In particular, there should be increased use of Article 36.4, which allows the Commission to join the admissibility and merits decisions in exceptional circumstances.
- The Commission should make clear and public its reasoning if it decides to decline to use a time-saving procedural resource.
- The Commission should be strict in granting time extensions to the parties.

#### **3. Adoption of Admissibility Decisions and Preliminary Revision of Merits Reports by a Working Group**

- If the recommendation to unify the process of admissibility and merits decisions is not implemented, then the Commission should adopt admissibility decisions by working group rather than the plenary of the Commission.
- A working group should revise drafts merits reports and submit its assessment to the plenary of the Commission so to speed up the discussions.

#### **4. Commission's use of Per Curiam Decisions and abbreviated format of reports**

- The Rules should explicitly allow the Commission to issue 'per curiam' decisions in cases that are substantially similar to cases that have previously been decided.

- The IACHR should delineate explicit criteria on what per curiam decisions can be based.
- This criteria and the process of identifying similar cases, should be made fully transparent to the public.
- The Commission should continue with its effort to reduce the length of its reports, particularly on admissibility.

#### **5. Addressing Structural Issues**

- The IACHR should consider the use of pilot judgments implemented by the European Court of Human Rights that are applicable to cases that are virtually the same and where the State shows good faith in the implementation of the IACHR's recommendations.
- The Commission should utilize more the rule on 'joint petitions,' which would process and decide several similar or identical cases in a single report.

#### **6. Receipt of Information and Documents**

- The Commission should revise its Rules to require petitioners and States to present all of their available evidence and documents at an earlier stage in the process.
- The Commission should use Articles 35(1), 36(1), 40(2), and 41(1) of the Court's Rules, which require the parties to submit all the offered evidence in their initial submissions, as a model for this change.

#### **7. Friendly Settlement**

- The IACHR should continue to make friendly settlement a high priority in its mission.
- The Commissioners and staff of the new Friendly Settlement Group should be trained on mediation and should be accessible to the petitioners and States.
- The Friendly Settlement Group should include within its mandate the identification of cases that are more likely to settle, or similar in nature, and encourage the parties to attend mediation sessions and find a resolution.
- New rules should specify the effects of noncompliance with friendly settlement.
- The Commission should have more on-site and working visits to States and should emphasize friendly settlement in these visits.

#### **8. Transparency and Criteria for Decisions**

- The Commission must strive for greater transparency throughout all of its work.
- The IACHR should publicize more information, particularly on the way the IACHR handles petitions and cases and how and the order in which they are disposed.
- Access for petitioners and States to follow the process through a set procedure of the Commission would increase transparency, legitimacy, coherency and fairness in each claim.
- The Commission should continue and expand its efforts further in using the PPP to fulfill this aim in a timely manner.

## **9. Follow-up Measures**

- The Commission should increase its follow-up measures.
- Article 48.1 of the Rules should be amended to make the adoption of follow-up measures mandatory and not discretionary.
- The IACHR should continue increasing the number of country visits per year.
- The agenda for each on-site and working visit should include meetings with representatives of the petitioners and States, meetings with State officers with decision-making power to discuss the implementation of its decisions, and the issuance of a public statement indicating the status of each case discussed.
- The Commission should avoid the use of vague language, such as should “adopt necessary measures”, in favor of specifying what sorts of measures would be sufficient.
- The IACHR should create, and make public, clear criteria to evaluate whether, and to what degree, a recommendation has been complied with.
- In its review of the status of compliance with its decisions, the Commission should provide clearer information explaining what constitutes full versus partial compliance.

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## I. Introduction

*“[I]t is in the interests of the proper administration of international justice that proceedings in the case be conducted without unnecessary delay”<sup>1</sup>*

Over the past two decades, the number and complexity of petitions filed with the Inter-American Commission on Human Rights (the “Commission”, or the “IACHR”) has steadily grown, resulting in a large backlog of petitions and a long wait time for case resolutions. With limited resources allocated by the Organization of American States (the “OAS”), the Commission has introduced various reforms to its internal practices and its Rules of Procedure (the “Rules”) to address the backlog and the length of adjudication. Although some progress has been made, petitioners still experience long wait times.

For example, in report number 123/10 (Gerzon Jairzinho González Arroyo and others), the IACHR stated that a duration of sixteen years for the criminal trial to reach the admissibility stage alone constituted an unwarranted delay. However, at the time the Commission issued this statement, the petitioners had been waiting for seventeen years for a separate decision on admissibility by the Commission.<sup>2</sup> The Clinic finds no distinction between the waiting time at the domestic and Commission level in which to justify such a delay.

The Human Rights Clinic (the “Clinic”) at the University of Texas School of Law set out to examine the IACHR’s length of its procedure, the causes of the delays and devise recommendations that would improve the Commission’s efficiency. In accordance with this aim, the Clinic created a database chronicling the length of time of each step in the Commission’s procedures for every adjudicated petition and case<sup>3</sup> since 1996. The Clinic also compiled the length of time of the subsequent procedures for each case in the Inter-American Court of Human Rights (the “Court”). Based on the Clinic’s findings—and in consideration of the objectives of a human rights body, the characteristics that make a human rights body effective, and general principles of system efficiency—the Clinic formulated recommendations intended to improve the performance of the Commission.

Section II of this report begins with an overview of the Commission, its multiple functions, and its limited resources. Next, the Clinic uses quantitative research to assess the challenges currently facing the Commission, particularly a growing backlog and long wait times. In light of these challenges and the limited resources available for competing functions, the Clinic concludes that the Commission’s current procedures could be modified to more adequately provide justice and promote human rights. In Section III, the Clinic considers measures adopted by the Commission to address these problems. Here, the Clinic praises reforms that have had a positive impact but also identifies well-intended reforms that have had

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<sup>1</sup> Case Concerning The Conservation And Sustainable Exploitation Of Swordfish Stocks In The South-Eastern Pacific Ocean (Chile/European Community) Order of December 11, 2008, ITLOS, Para. 13, available at [http://www.itlos.org/start2\\_en.html](http://www.itlos.org/start2_en.html).

<sup>2</sup> The Commission received the petition on April 7, 1993. The decision on admissibility was reached on October 23, 2010. Report available at: [www.cidh.oas.org/annualrep/2010eng/COAD11144EN.DOC](http://www.cidh.oas.org/annualrep/2010eng/COAD11144EN.DOC).

<sup>3</sup> Petitions refer to all complaints received and processed by the Commission until the IACHR makes a formal admissibility decision. Once there is an admissibility decision, the petition becomes a case. *See infra* Section II(A)(1).

unintended negative consequences. In order to frame the recommendations that conclude the report, Section IV lays out the Clinic's analytical methodology by discussing what makes a human rights body both effective and efficient. Section V includes an examination of other adjudicating bodies' strategies for dealing with backlogs and delays or to increase transparency and considers their applicability to the Commission. Finally, in Section VI, the Clinic makes several recommendations, including both internal reforms and changes to the Rules, which could increase effectiveness and efficiency.

The findings in this report are based on the analysis of quantitative data, interviews conducted with high-level officers of the Commission's Executive Secretariat, and extensive research of primary and secondary sources. In March 2011, the Clinic prepared a list of questions that were submitted to the Executive Secretary of the Commission. The Clinic received comprehensive answers to these questions on October 4, 2011, and the report has been edited to incorporate these responses. This report was written by Grace Beecroft, Priya Bhandari, Robert Brown, Stacy Cammarano, Amy Fang, Nicholas Hughes, Nishi Kothari, and Monica Uribe. Ariel Dulitzky, the Clinic's Director and former Assistant Executive Secretary of the Commission, supervised the work, reviewed the different drafts, and was responsible for the final version of the report. Celina Van Dembroucke created the first version of the database that was updated with the support of Carlos Mejias, Anne-Marie Huff, Victoria Cruz, Melissa Brightwell, Anna Koob, and Katie Sobering. Ted Magee, the Clinic Administrator, and Shailie Thakkar edited the final version of the report.

## II. Background

### A. Overview of the Commission: Multiple Functions; Limited Resources

The IACHR is an autonomous organ of the OAS, as mandated by the OAS Charter<sup>4</sup> and the American Convention on Human Rights (the “Convention”).<sup>5</sup> It is a body that meets in at least three regular sessions per year but may convene additional sessions.<sup>6</sup> The Commission’s primary objective is to promote the observance and protection of human rights in the Americas<sup>7</sup> by exercising political, diplomatic, legal, and adjudicatory powers. As a result, the Commission has many different functions that often compete for a limited amount of resources. These multiple functions have an impact on the adjudicative process of the Commission.

In addition to its adjudicative functions in the case system, which is the main focus of this report, the Commission has important promotional, monitoring, and diplomatic duties.<sup>8</sup> The Clinic does not intend to study the other multiple functions of the IACHR; nevertheless it recognizes that the Commission has increased the number of activities that it carries out in addition to the adjudication of cases. In this section, the Clinic discusses some of the other areas of work of the IACHR that impact upon the adjudication of cases.<sup>9</sup> For example, the Commission has created several rapporteurships to focus on certain vulnerable groups and/or to promote thematic areas of rights. Rapporteurships are assigned to Commissioners; with most of the rapporteurships receiving a small support team of one to three attorneys (the exception is the Special Rapporteurship on the Right to Freedom of Expression which is headed by a Special Rapporteur and has a team of six staffers).<sup>10</sup> Thematic rapporteurships play a role in the processing of individual cases. In fact, many of the rapporteurships draft decisions on admissibility and merits for petitions and cases dealing with their respective thematic areas, litigate or support cases in their areas before the Court, and even fund part of the litigation costs of those cases. The rapporteurships also support and provide expert knowledge to the Commission in the handling of those cases.<sup>11</sup> Moreover, rapporteurships play an important role in the follow-up of the Commission’s recommendations, promoting their implementation.

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<sup>4</sup> Organization of American States Charter art. 106 Dec. 13, 1951.

<sup>5</sup> Organization of American States, American Convention on Human Rights, art Nov. 22, 1969, O.A.S.T.S. No. 36, 1144 U.N.T.S. 123 [hereinafter American Convention].

<sup>6</sup> Inter-Am. Comm’n H.R., Rules of Procedure of the Inter-American Commission on Human Rights art 14.1 (Nov. 13, 2009) [hereinafter Commission Rules of Procedure].

<sup>7</sup> General Assembly of the Organization of American States, Statute of the Inter-American Commission on Human Rights. art 1, Res No 447 (Oct. 1979).

<sup>8</sup> These duties include: developing awareness of human rights; making recommendations to Member State governments; preparing studies and reports; requesting information from Member States on the measures adopted to address human rights concerns; responding to Member State inquiries on human rights matters and providing those States with the requested advisory services if possible; acting on petitions and other communications as authorized to do so under Articles 44 through 51 of the Convention; and submitting an annual report to the General Assembly of the OAS. American Convention, *supra* note 5, art. 41.

<sup>9</sup> The IACHR has increased the number of thematic reports issued from only 1 prior to 2001, to 20 in the period 2002-2010 (Information prepared for the Human Rights Clinic of the University of Texas School of Law in relation to the draft Study on Efficiency and effectiveness of the Inter-American Commission on Human Rights). [hereinafter *Commission’s Answers*].

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

The Commission also conducts on-site visits to Member States to monitor and promote human rights in that State. During the on-site visits, Commissioners build rapport with domestic government officials, assess the general situation of human rights in the State and publish a report based on their findings. The Commission may also investigate factual matters in individual cases, but it rarely does so.<sup>12</sup> Individual Commissioners also conduct “working” visits to countries in their positions as country or thematic rapporteurs. The duration of on-site visits generally range from one to ten days, although one on-site visit in 1965 lasted nearly a year.<sup>13</sup>

Both country on-site visits and working visits provide important support for the adjudicative role of the Commission. First, the visits help the Commission contextualize the individual complaints and understand the underlying problems. The visits also serve the important purpose of raising the profile of the Commission and giving petitioners the opportunity to file new complaints or to present new evidence. Finally, the visits give the Commission the chance to negotiate friendly settlements, evaluate the implementation of previous recommendations, and implement strategies to apply the Convention and facilitate full compliance with the decisions of the Commission and the Court. The Clinic commends the Commission’s commitment to increasing on-site country visits in the Strategic Plan, Programs 2 to 5.<sup>14</sup>

These and the other multiple functions compete for the time and scarce resources of the Commission. This multiplicity of functions can therefore be seen as both an asset, and yet also a hindrance in this regard.

## **1. Case Adjudication**

While the Commission is not a fully judicial body, it does process individual complaints in a quasi-judicial manner acting as an adjudicative body. A petition may be presented by any person, group of persons, or nongovernmental organization (“NGO”) that claims a violation of the rights protected in the American Convention<sup>15</sup> and/or the American Declaration on the Rights and Duties of Man (the “American Declaration”) or other instruments.<sup>16</sup> The petition may be presented on behalf of the person filing the petition or on behalf of a third person. The Commission may only process individual petitions against OAS Member States.

The petitions presented to the Commission must show that the victim has exhausted all domestic remedies or that there is a permissible exception to this requirement.<sup>17</sup> If domestic remedies have been exhausted, the petition must be presented to the Commission within six months after the final decision in the domestic proceedings.<sup>18</sup>

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<sup>12</sup> On-site visits consist of two or more Commissioners convened specifically for the purpose of on-site observations. Commission Rules of Procedure, *supra* note 6, art. 53.

<sup>13</sup> Inter-Am. Comm’n H.R., On-Site Visits (January 2010), <http://www.cidh.org/visitas.eng.htm>.

<sup>14</sup> In 2002, the IACHR conducted five on-site country visits. In 2010, there were 10 (Commission’s Answer’s, *supra* note 9 at 12).

<sup>15</sup> American Convention, *supra* note 5, art. 44.

<sup>16</sup> Commission Rules of Procedure, *supra* note 6, art. 23.

<sup>17</sup> Commission Rules of Procedure, *supra* note 6, art. 31.

<sup>18</sup> *Id.*, art. 32

Upon receiving a complaint, the Commission acting through its Executive Secretariat assigns the complaint a number and starts to process it as a petition. New petitions are currently processed in the order that they are received, with specific categories of complaints receiving priority treatment—petitions involving the death penalty, the rights of children, systematic deterioration, and petitioners over the age of eighty.<sup>19</sup> If the petition meets *prima facie* the “processability” requirements, it is transmitted to the State. Once a petition is processed and transmitted to the State, it must still pass the admissibility stage before the Commission will consider the merits of the case. In considering a petition’s admissibility, the Commission can declare the petition inadmissible and issue an express decision to that effect, thus terminating the petition, or it can find the petition admissible, at which point the petition is registered and becomes a case.<sup>20</sup> The Commission need not formally declare a petition admissible before addressing the merits;<sup>21</sup> however, in most cases the Commission will declare a petition admissible before reaching a decision on the merits. In serious or urgent cases, the Commission may defer its admissibility decision and address the admissibility of the petition simultaneously with its final decision on the merits.<sup>22</sup> The Commission rules on the merits, and transmits this to the States with time to implement the recommendations. At any point during the petition or case process, the parties or the Commission may initiate friendly settlement proceedings.<sup>23</sup> If an agreement between the parties is reached, the Commission will adopt a report on the friendly settlement agreement.<sup>24</sup>

If the State concerned has ratified the Convention and accepted the jurisdiction of the Court, the Commission may refer the case to the Court for a decision on the merits.<sup>25</sup> Article 45 of the Rules establishes a presumption that the Commission shall refer the case to the Court when it “considers that the State has not complied with the recommendations of the report, approved in accordance with Article 50 of the American Convention” and that in deciding:

Shall give fundamental consideration to obtaining justice in the particular case, based, among others, on the following factors: a. the position of the petitioner; b. the nature and seriousness of the violation; c. the need to develop or clarify the case-law of the system; and d. the future effect of the decision within the legal systems of the Member States.<sup>26</sup>

If the case is not transmitted to the Court, the Commission shall issue a final merits report and give additional time to comply with the recommendations. Finally, the IACHR must decide whether to publish it.<sup>27</sup> The Commission may then adopt the appropriate follow-up measures,

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<sup>19</sup> Telephone Interview with staff member of the Registry, Inter-Am. Comm’n H.R. (Oct. 19, 2011) [hereinafter Registry Interview]. The staff member wished to remain anonymous.

<sup>20</sup> Commission Rules of Procedure, *supra* note 6, art. 36.2.

<sup>21</sup> Velasquez Rodriguez Case, Judgment of July 29, 1988, Inter-Am.Ct.H.R. (Ser. C) No. 4 (1988).

<sup>22</sup> See Section II(C)(4)(a)(ii) for a detailed explanation of decision on the merits.

<sup>23</sup> Commission Rules of Procedure, *supra* note 6, art. 40.1.

<sup>24</sup> *Id.* art. 40.5.

<sup>25</sup> American Convention, *supra* note 5, art. 51.

<sup>26</sup> Commission Rules of Procedure, *supra* note 6, art. 45.

<sup>27</sup> American Convention, *supra* note 5, art. 51.

such as requesting more information from the parties or holding hearings to check compliance with its decisions.<sup>28</sup>

## 2. Executive Secretariat

The Executive Secretariat (the “Secretariat”) aids the Commission by carrying out various tasks including preparing resolutions, conducting studies, and any other work entrusted to it by the Commission or its President.<sup>29</sup> As a permanent body (as opposed to the part-time nature of the Commissioners’ positions), the Executive Secretariat plays a fundamental and “large, discretionary part in the Commission’s work” processing individual petitions.<sup>30</sup> The Secretariat receives and processes correspondence, petitions, and communications and has the power to request interested parties to provide any information that it deems relevant, in accordance with the Rules of Procedure.<sup>31</sup> The Secretariat also drafts all of the admissibility, friendly settlement and merits reports as applications to the Court in individual petitions and cases. Crucially, the Commission has delegated to the Executive Secretariat the power to revise new complaints and to decide not to process those that do not meet *prima facie* the normative requirements.

As the quantity and complexity of petitions has increased, the Executive Secretariat has undergone several profound and welcoming reforms in order to strengthen its work.<sup>32</sup> It has changed from an organization based on country desks, to a pyramidal structure responding to the different work pillars of the Commission. Currently the Executive Secretariat consists of three sections that correspond in part with the procedural stages of the petition and case system and a fourth section that is divided into geographical regions and handles multiple procedural stages. In addition, the thematic Rapporteurships also have assigned personnel.<sup>33</sup>

The registration section, or the so-called “Registry,”<sup>34</sup> handles the initial reception and evaluation of petitions. This section consists of a senior attorney, four junior professionals, and two administrative assistants. As of October 2008, the Secretariat transferred to its registry unit all of its new petitions waiting to be reviewed, a total of 4,471 petitions. The court group also deals with jurisdictional questions relating to the referral and litigation of cases to the Court and

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<sup>28</sup> Commission Rules of Procedure, *supra* note 6, art. 46.

<sup>29</sup> Statute of the Inter-American Commission on Human Rights, *supra* note 7, art 21(1) (establishing that “The Secretariat services of the Commission shall be provided by a specialized administrative unit under the direction of an Executive Secretary. This unit shall be provided with the resources and staff required to accomplish the tasks the Commission may assign to it.”)

<sup>30</sup> David Harris, *Regional Protection of Human Rights; The Inter-American Achievement*, in THE INTER-AMERICAN SYSTEM OF HUMAN RIGHTS 19 (David Harris and Stephen Livingstone eds., Oxford, 1998).

<sup>31</sup> Commission Rules of Procedure, *supra* note 6, art. 13.

<sup>32</sup> *Infra* section III(B) at 54.

<sup>33</sup> Their numbers are as follows: Section Andean I (3 attorneys), Section Andean II (2 attorneys), Section EFP (3 attorneys and 1 Coordinator), Section Mid-America (1 attorney and 1 Coordinator), Section Southern Cone (3 attorneys and 1 Coordinator), Protection Group (2 attorneys and 1 Coordinator), Court Group (2 attorneys). Each rapporteurship is, on average, assigned one attorney. In certain cases rapporteurships may also have the part-time assistance of another attorney. The exception is the Rapporteurship on Freedom of Expression, which currently has 2 attorneys working with the full-time Rapporteur (Commission’s Answers, *supra* note 10, at 4, 21).

<sup>34</sup> The Clinic notes that the name “Registry” is problematic. In many international tribunals the Registry plays the same role as the Executive Secretariat does at the Commission. Thus, the Clinic recommends changing its name to reflect the limited participation of the section at the early stage of this process. See Section V(C)(3).

follows up on the Court's judgments and provisional measures.<sup>35</sup> The protection group examines requests for precautionary measures<sup>36</sup> to make an initial analysis and recommend a course of action to the IACHR. Additionally, it handles the processing of precautionary measures and tracks the situation with the petitioner and the State to determine when the precautionary measures are no longer necessary.

The regional sections<sup>37</sup> focus on the processing of individual petitions and cases. During the admissibility stage, the regional sections verify information, process cases on admissibility, and draft the reports. In the merits phase, the regional sections assess the observations by the parties, determine the need for additional information, and recommend the convening of hearings when necessary. These sections also follow up on recommendations made by the Commission. Finally, the regional sections handle the processing of friendly settlement procedures<sup>38</sup> and also draft the merits reports. Each regional section is coordinated by a principal specialist and has one senior professional, two junior professionals, and one administrative assistant, handling between 300 and 400 ongoing petitions and cases. Generally, the junior professionals deal with petitions in the admissibility stage while the senior professional handles the cases in the merits stage.

### 3. Limited Resources

The Commission is funded by the OAS and donor support. In 2010, it had a budget of just over \$7 million, with \$3.4 million provided by donations and \$4 million from the OAS.<sup>39</sup> The \$4 million provided by the OAS only represents 5% of the total OAS 2010 Program Budget.<sup>40</sup> The Commission suffers a chronic problem of underfunding and the OAS does not appear to be interested in securing proper funding for its main human rights body.<sup>41</sup>

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<sup>35</sup> See American Convention, *supra* note 5, art. 63.2.

<sup>36</sup> See Commission Rules of Procedure, *supra* note 6, art. 25.

<sup>37</sup> There are 5 Regional Sections: Andean 1 (Colombia, Ecuador and Venezuela), Andean 2 (Peru and Bolivia), Southern Cone (Argentina, Chile, Paraguay and Uruguay), Mesoamerica (Costa Rica, Cuba, El Salvador, Guatemala, Honduras, Mexico, Panama and Dominican Republic) and the so-called EFP (English, French and Portuguese: Brazil, Canada, United States, Antigua and Barbuda, Bahamas, Barbados, Belize, Dominica, Grenada, Haiti, Jamaica, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Suriname and Trinidad and Tobago). Commission's Answers, *supra* note 9.

<sup>38</sup> The Clinic understands that this particular task will be transferred to the recently created Friendly Settlement Group.

<sup>39</sup> Inter-Am. Comm'n H. R., Financial Resources (2010), <http://www.cidh.oas.org/recursos.eng.htm>.

<sup>40</sup> *Id.*

<sup>41</sup> The underfunding of the Commission is a permanent and structural problem that affected the Commission from its very first years of operation. In 1970 it was said that the Commission's "small budget is a ... substantial limit on its autonomy.... [The] limited budget restricts the Commission's ability to hire specialized personnel and makes it difficult to engage in special operations." ANNA SCHREIBER, THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS 42 (A.W. Sijthoff/Leyden 1970). See also Inter-Am. Comm'n H.R., *IACHR Annual Report 1976*, §1D, OEA/Ser.L/VII.40 Doc. 5 corr. 1 (March 10, 1977) ("The work of the Commission has been increasing in volume and in intensity due to the constant increase of denunciations of violations of human rights in various regions in the hemisphere and, as was already pointed out elsewhere, that increase in the work load has not been accompanied by a proportional enlargement of the means for handling it. The Commission still is limited to the staff and resources that it had several years ago.").

As a result, the Commission cannot hire the necessary staff to properly perform all of its functions. Currently the Commission has 37 professionals and 18 administrative staff.<sup>42</sup> Nevertheless, the Executive Secretary has said that “in order to have a healthy and strong system of individual cases that functions in pace with the requirements of the region and on a timely basis, a total of 87 professionals and 25 administrative assistants are needed.”<sup>43</sup> Moreover, more than 50% of the staff of the Executive Secretariat is currently financed by external cooperation funds.<sup>44</sup> In addition, dependent on available funding, the Commission utilizes between 10-12 interns, and 2-3 fellows, assigned in accordance with the needs of the Commission.<sup>45</sup>

The Commission generally has increased its external funding since 2007.<sup>46</sup> Still, the Commission’s 2010 funding was only 5% of the OAS’ total budget.<sup>47</sup> As such, a considerable part of the funds come from sources outside of the OAS. In 2010, a large portion came from Member States.<sup>48</sup> Of the \$1,267,500 contributed by Member States, \$748,600 was funded by Canada.<sup>49</sup> The USA contributed the second highest amount, \$400,000, while Colombia contributed \$105,000 and Chile contributed \$10,000.<sup>50</sup> Finally, Costa Rica contributed \$3,900 to the Commission.<sup>51</sup> A large portion of the funding, \$1,154,900, came from observer States, of which more than half, \$700,000, came from Spain.<sup>52</sup> The European Commission and other institutions, such as UNICEF and the Inter-American Development Bank, also contributed a significant portion.<sup>53</sup> It is important to note that the contributions from donors have decreased significantly since 2009. In 2010, Member States donated just below \$500,000 less than in 2009, with the USA reducing its funding by over \$1,000,000. Canada is now the biggest donor, contributing more than the European Union.<sup>54</sup>

The Commission has continually tried to deal with its persistent lack of financial resources. The extensive changes within the Executive Secretariat were enabled by an ongoing campaign to secure additional funds. The Inter-American bodies assumed when amending their procedures<sup>55</sup> that “[t]he costs...will rise under the Commission’s and the Court’s new

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<sup>42</sup> Inter-Am. Comm’n H.R., Composition of the IACHR 2010, <http://www.cidh.oas.org/personal.eng.htm>.

<sup>43</sup> Presentation of the Executive Secretary of the Inter-American Commission on Human Rights, Santiago A. Canton, at the Joint Meeting of the Committee on Juridical and Political Affairs and the Committee on Administrative and Budgetary Affairs “Short-, Medium-, and Long-Term Budgetary Requirements of the Inter-American Commission on Human Rights” 8, CP/CAJP- 2694/09 (February 5, 2009). [hereinafter Presentation of the Executive Secretary]

<sup>44</sup> *Id.* at 5.

<sup>45</sup> Commission’s Answers, *supra* note 9 at 21.

<sup>46</sup> See Inter-Am. Comm’n H.R., *Financial Resources* (2009); Inter-Am. Comm’n H.R., *Financial Resources* (2008), [http://www.cidh.oas.org/pdf%20files/Participation%20of%20IACHR%20in%20the%202008%20OAS%20Budget\\_english.pdf](http://www.cidh.oas.org/pdf%20files/Participation%20of%20IACHR%20in%20the%202008%20OAS%20Budget_english.pdf); Inter-Am. Comm’n H.R., *Financial Resources* (2007), <http://www.cidh.oas.org/recursos2007.eng.htm>.

<sup>47</sup> Organization of American States, *Contributions to the Inter-American Commission on Human Rights*, (2010), <http://www.cidh.org/recursos.eng.htm> [hereinafter 2010 Contributions]

<sup>48</sup> *Id.*

<sup>49</sup> *Id.*

<sup>50</sup> *Id.*

<sup>51</sup> *Id.*

<sup>52</sup> *Id.*

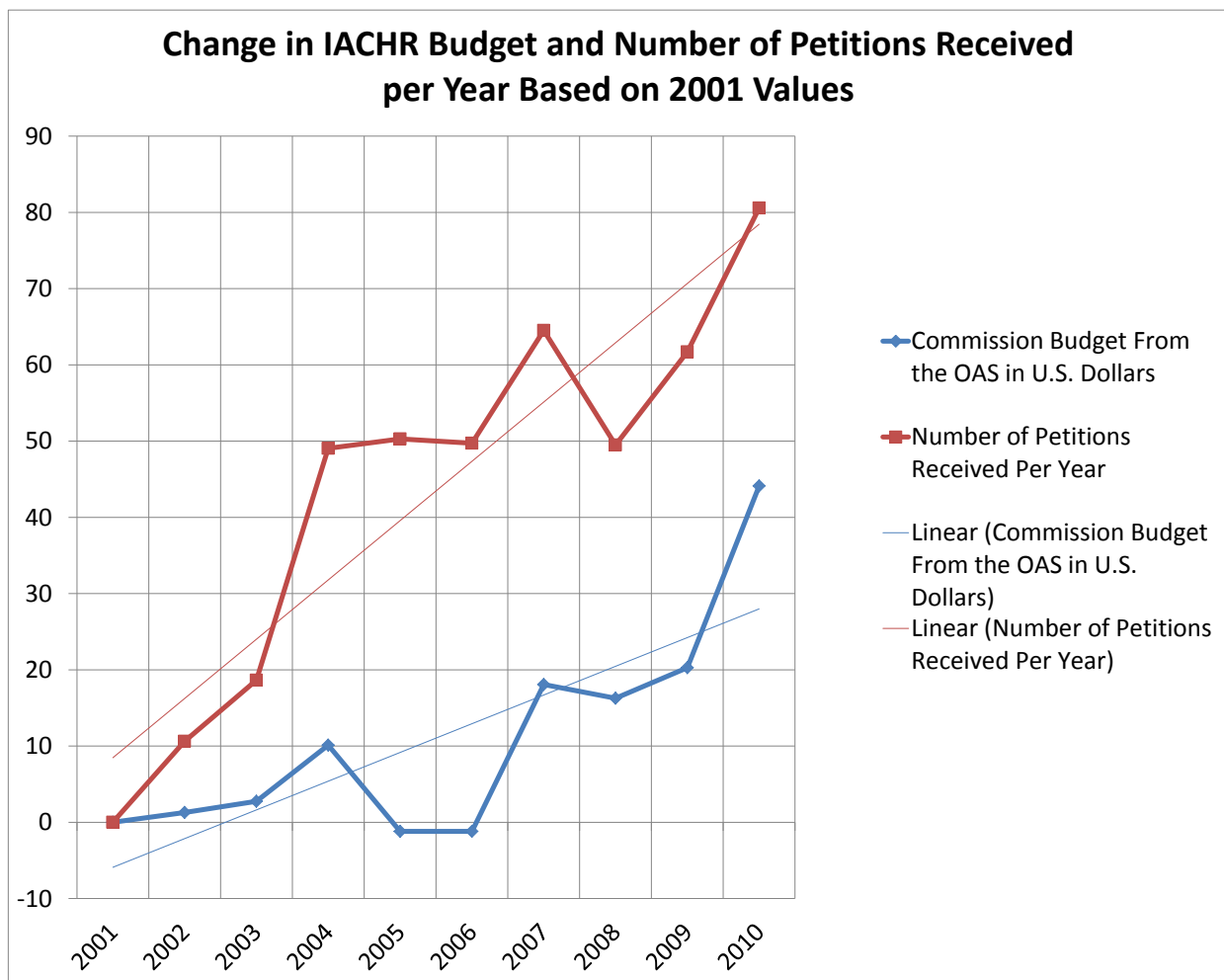
<sup>53</sup> *Id.*

<sup>54</sup> *Id.*

<sup>55</sup> Discussed *infra* Section III.



regulations, with a substantial increase in the number of cases brought before the Court.”<sup>56</sup> The Commission at that time hoped that it would “receive effective support and a serious commitment by all member States to substantially increase the financial resources of both bodies, as an indispensable step to attain the shared objectives of strengthening the Inter-American system for the protection of human rights.” Those additional funds were needed to “avoid a crisis of the Inter-American human rights protection system.”<sup>57</sup> As of today, those additional funds never materialized at the level the Commission expected, leading in part to the current difficulties faced by the system. Furthermore, many funders are not interested in supporting the processing of individual petitions or the hiring of additional staff. As such, it is possible to attribute a substantial portion of the responsibility for the backlog and delay to the OAS failure to properly fund the Commission. Thus, it is not surprising that a fundamental part of the Strategic Plan of the IACHR is dedicated to “obtain sufficient resources to perform its mandate and achieve its other strategic objectives.”<sup>58</sup>



<sup>56</sup> Joint appeal by the Inter-American Court of Human Rights and the Inter-American Commission on Human Rights to the Delegations of the Member States, CP/CAJP-1930/02 (Apr. 19, 2002).

<sup>57</sup> Presentation by the Chairman of the Inter-American Commission on Human Rights at the joint meeting with the Inter-American Court of Human Rights CP/CAJP-1931/02 (Apr. 23, 2002).

<sup>58</sup> Inter-Am. Comm’n H.R., *Strategic Plan 2011–2015, Part I: 50 Years Defending Human Rights: Results and Challenges*, 18 (January 2011). [hereinafter: *Strategic Plan Part I*]

As the preceding graph shows, the budget growth that the OAS allocates to the IACHR has not been proportional to the constant growth in the number of petitions received per year. On top of this growth in the number of petitions, there is a growing number of thematic reports produced by the Commission, mandates given to the IACHR by the OAS General Assembly, among others. It is easy to understand the Commission's difficulties dealing with petitions and cases in an efficient manner.

## **B. Challenges Facing the Commission: Backlog, Frontloaded Process, and the Current Long Wait Times**

There is a general consensus that the Commission's procedural process is lengthy and slow.<sup>59</sup> The Clinic's research shows that the Commission has a large backlog of cases and petitioners face long wait times. The Commission is also aware and agrees with this diagnosis.<sup>60</sup> The resource allocation is also frontloaded, resulting in more decisions dealing with admissibility of petitions than resolution on the merits of the cases.

### **1. Quantitative Research on the Commission**

#### **a. Backlog and Frontloaded Process**

In a single year, the Executive Secretariat may receive anywhere between 1,300 and 1,500 petitions.<sup>61</sup> The Commission has received an increased number of new petitions in the last fifteen years, exponentially jumping from 439 in 1997 to 1598 in 2010. This growth is due in part to the democratic consolidation, more civic participation, and more knowledge of the system among its users. The increased number necessarily affected the pace of adjudication.<sup>62</sup>

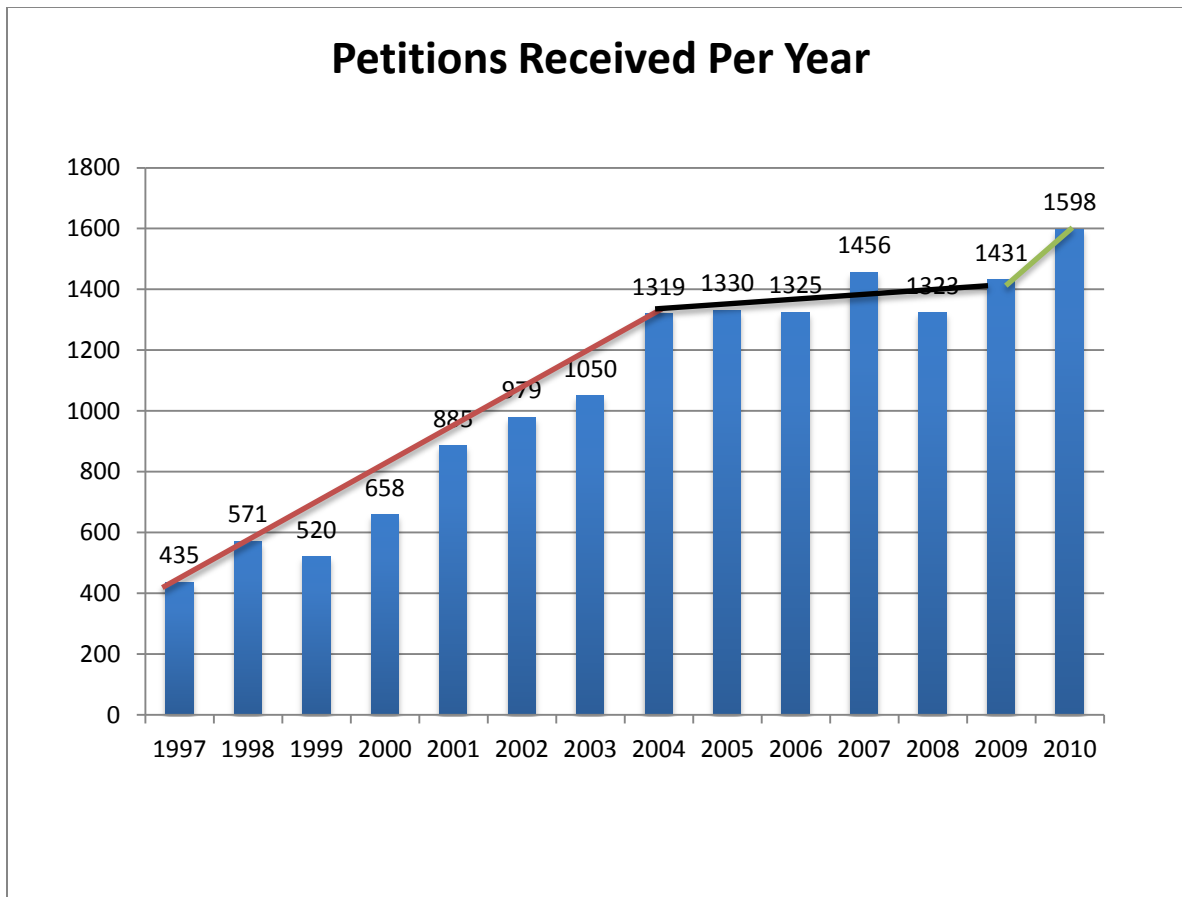
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<sup>59</sup> This appears to be a constant problem of the Commission. In 1994 it was stated that delays in the processing petitions was a common complaint among all the users of the System. And that sometimes those delays make the process ineffective. See, ILSA, SISTEMA INTERAMERICANO PARA LA PROTECCION DE LOS DERECHOS HUMANOS. APORTES PARA UNA EVALUACION (1994) at 66-67. [Hereinafter, ILSA, Aportes].

<sup>60</sup> Strategic Plan Part I, *supra* note 58.

<sup>61</sup> See Inter-Am. Comm'n H.R., Annual Report of the Inter-American Commission on Human Rights 2010 CH III (2010), <http://www.cidh.oas.org/annualrep/2010eng/TOC.htm> [hereinafter Annual Report 2010], Inter-Am. Comm'n H.R., Annual Report of the Inter-American Commission on Human Rights 2009 ch. III (2009), <http://www.cidh.oas.org/annualrep/2009eng/TOC.htm> [hereinafter Annual Report 2009]; Inter-Am. Comm'n H.R., Annual Report of the Inter-American Commission on Human Rights 2008 ch. III, (2008), <http://www.cidh.oas.org/annualrep/2008eng/TOC.htm> [hereinafter Annual Report 2008]; Inter-Am. Comm'n H.R., Annual Report of the Inter-American Commission on Human Rights 2007 ch. III, (2007), <http://www.cidh.oas.org/annualrep/2007eng/TOC.htm>. [hereinafter Annual Report 2007]

<sup>62</sup> Strategic Plan Part I, *supra* 58. See also, OAS, Permanent Counsel, Report of the Special Working Group to Reflect on the Workings of the Inter-American Commission on Human Rights with a view to Strengthening the Inter-American Human Rights System for consideration by the Permanent Council, GT/SIDH/13/11 rev. 2 [hereinafter OAS Working Group].



It is estimated that only 10% - 13% of petitions are found receivable, in which case the Executive Secretariat dismisses 87% - 90% outright. These petitions never enter the docket for any sort of formal and public decision by the plenary of the Commission.<sup>63</sup> Even so, this means that anywhere from 130 to 275 petitions are added to the Commission's docket every year, making it difficult for the IACHR to keep pace with the new petitions. The highest number of public decisions made in a single year—including archival decisions,<sup>64</sup> admissibility decisions (both rulings of admissible and inadmissible), friendly settlement reports, and merits decisions—is 153 in 2010. Only fifteen of these decisions fully adjudicated a petition, with four merits decisions, and eleven friendly settlements. On top of that the Commission referred sixteen cases to the Court that year, and these should also be considered merits decisions.<sup>65</sup> The Commission dealt with a large number of backlogged cases by archiving fifty-five cases in 2010. While the Clinic commends the Commission for addressing the backlog by archiving old cases, it does not

<sup>63</sup> As such, this process lacks any type of oversight and accountability. Neither the members of the Commission nor the public in general know the reasons for the rejection of those new petitions by the Executive Secretariat.

<sup>64</sup> Archived cases are those where the grounds for the petition or case do not exist or subsist or where the information necessary for the adoption of a decision is unavailable. As a result, the Commission notifies the parties of the possibility of a decision to archive, requests more information, and eventually decides to archive the case. Commission Rules of Procedure, *supra* note 5, art. 42. The Commission published 55 archival decisions in 2010. The Commission reported that it also adopted 25 merits reports that are still not published. Annual Report 2010, *supra* note 49, ¶39.

<sup>65</sup> Annual Report 2010, *supra* note 49, ¶39.

include these archival decisions in the data for finally adjudicated cases. This is because an archival decision does not contain any explicit or implicit determination on the complaint, nor results in final relief for a petitioner. These 55 archived cases have effects similar to inadmissibility decisions in that they are eliminated from the list of pending cases and petitions. Of the remaining decisions, seventy-three only determined admissibility, the first step in the process. The disparity between the number of petitions received and the number decided indicates that the Commission's speed often cannot keep up with the demand for rulings on petitions and cases, thus forming a backlog.

According to an official of the Commission, there is an even greater effort to deal with new petitions in a timely manner inside the Executive Secretariat, which must process all petitions received before they can reach the stage of admissibility. Currently there are approximately 5,200 applications waiting for an initial review. In reality, these unreviewed petitions date back to 2008. Nevertheless, according to the same source at the Commission, this waiting list is much shorter now than it was a few years ago. The Clinic congratulates the Executive Secretariat for drastically reducing the backlog in the review of new petitions, the result of a coordinated effort which raised additional funds with the specific goal of eliminating the backlog by 2015. Specifically, the Clinic emphasizes the fact that since 2008 the Commission has been able to process more petitions than it receives.

The Clinic's data focuses on the backlog that is apparent from published decisions. However, the Commission has recently published statistics on the petitions and cases waiting in the docket that have not had a decision.<sup>66</sup> As of 30 August 2011, there were 5213 petitions pending initial evaluation.<sup>67</sup> 1137 petitions await an admissibility decision,<sup>68</sup> and 515 matters await a decision on the merits.<sup>69</sup> Thus, the current backlog predominantly lies in the beginning phases. However, if the Commission continues to devote its resources to the admissibility phase without any increased emphasis on the merits phase, it will merely move the backlog to the latter. It should also be kept in mind that the review of new petitions and the preparation of admissibility reports is simpler and faster than that of merits reports.

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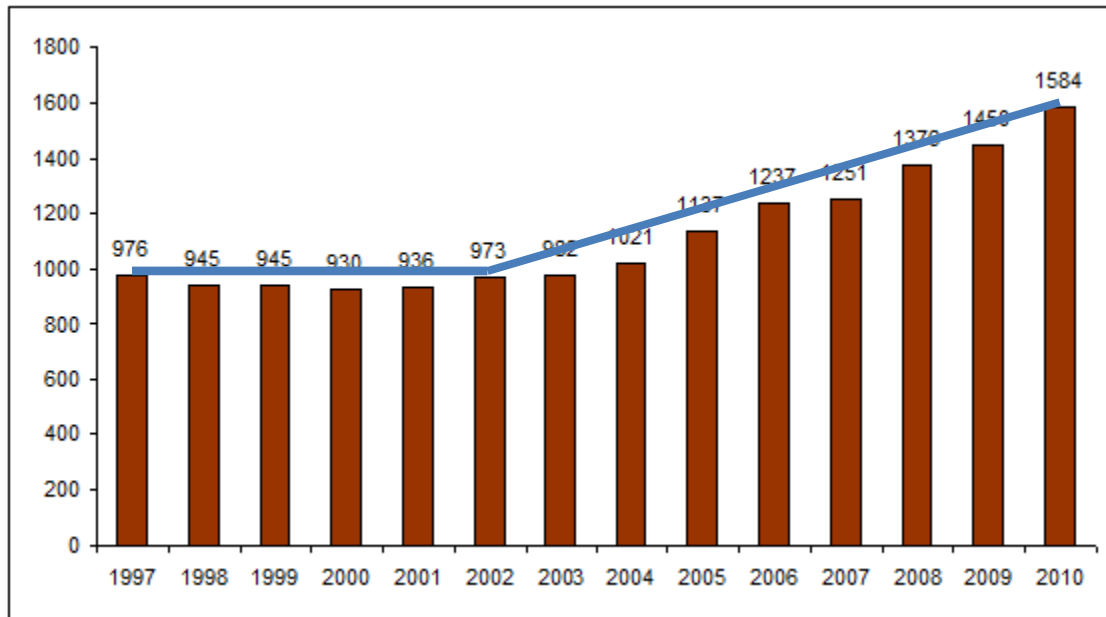
<sup>66</sup> Strategic Plan Part I, *supra* note 58, at 18.

<sup>67</sup> Commission's Answers, *supra* note 9, at 16.

<sup>68</sup> *Id.*

<sup>69</sup> *Id.*

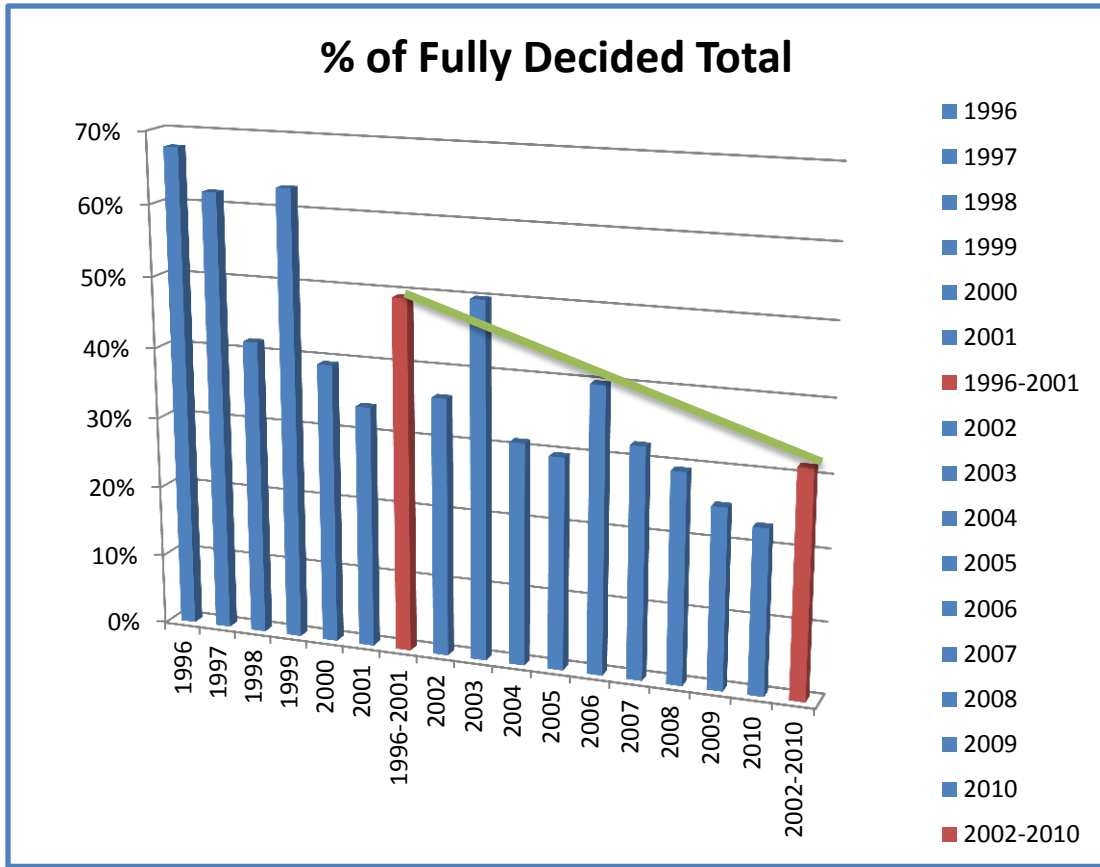
### Number of pending petitions and cases



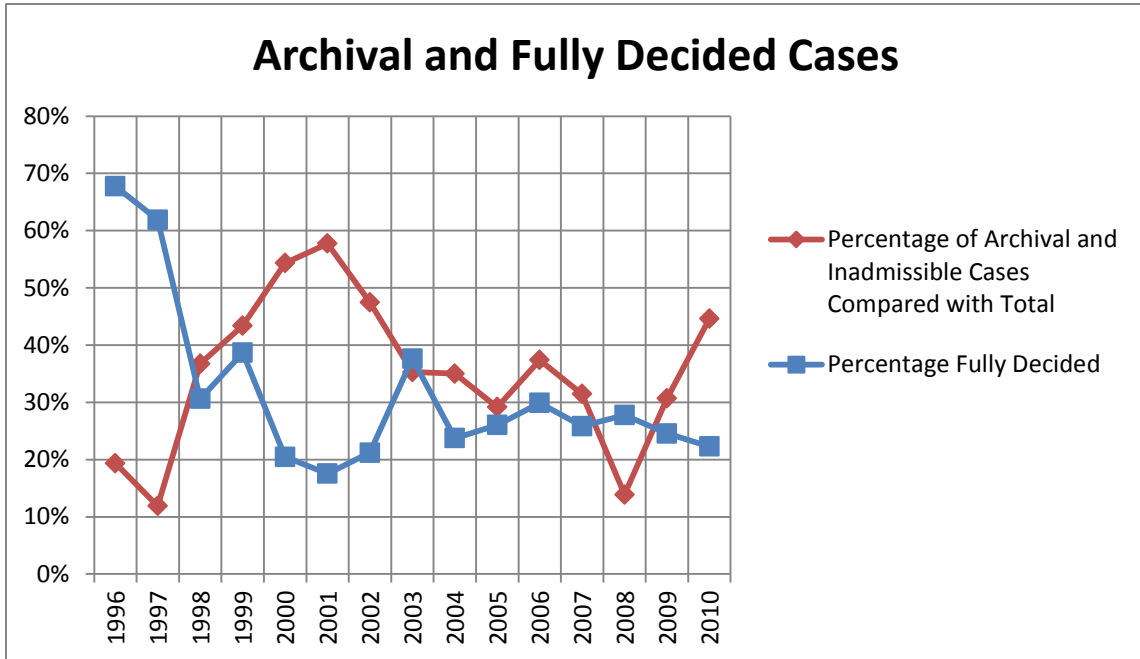
This low number of fully adjudicated cases reflects a trend in the Commission. Since 2002, the Commission has published less than ten merits decisions every year except in 2009. In 2010, excluding archival decisions,<sup>70</sup> just over 15% of the Commission's decisions were a full merits adjudication in the form of a merits or friendly settlement decision. Including the cases submitted to the Court, that number only rises to 29% of cases being fully decided. This means that while the Commission may be producing more decisions than in the past, an increasing number of petitions remain in the system without a final decision. According to the Executive Secretary of the Commission, by the end of 2008, 1,296 petitions and cases were being processed, with 904 (69%) in the admissibility stage and 392 (31%) in the merits stage.<sup>71</sup> The same proportions were maintained in 2010. Even in its most productive year (2010), the Commission's percentage of merits decisions did not match the percentage of cases pending in the merits stage (29% versus 31%). The imbalance between admissibility and merits decisions, though helpful for eliminating clearly meritless cases, further increases the backlog and fails to provide final recommendations in enough cases.

<sup>70</sup> The Clinic did not include archival decisions as decisions which definitively decide cases and petitions. Counting archival decisions as final adjudications misrepresents their relationship to admissibility decisions. Although archived cases are eliminated from the queue, the comparison of admissibility to merits and friendly settlement decisions best shows the relationship between the growing queues after the admissibility stage. All cases ruled admissible must later reach a final resolution in the form of a merits or friendly settlement decision, or may be archived or referred to the Court. Archival decisions do not contain any explicit or implicit determination on the complaint, nor do they result in final relief for the petitioner. In any case, as is explained in the text, the character and effect of archival decisions are similar to those of inadmissibility in the sense that they are eliminated from the IACHR's list of pending cases and petitions but they do not include determinations on the merits of the petition or case.

<sup>71</sup> Presentation of the Executive Secretary, *supra* note 35 at 3.



Decisions by Year												
Year	Admissibility	Archival	Friendly Settlement	Inadmissibility	Merits	Total	Finished Cases	Percentage of Archival and Inadmissible Cases Compared with Total	Submissions to Court	% Fully Decided	Total Percentages of Archival, Inadmissible, and Fully Decided	
1996	8	0	1	6	16	31	55%	19%	4	68%	87%	
1997	13	0	1	5	23	42	57%	12%	2	62%	74%	
1998	35	26	2	10	25	98	28%	37%	3	31%	67%	
1999	26	41	4	5	30	106	32%	43%	7	39%	82%	
2000	35	61	13	8	10	127	18%	54%	3	20%	75%	
2001	29	47	8	9	4	97	12%	58%	5	18%	75%	
2002	38	41	3	6	11	99	14%	47%	7	21%	69%	
2003	38	21	11	9	6	85	20%	35%	15	38%	73%	
2004	45	19	3	9	4	80	9%	35%	12	24%	59%	
2005	53	12	8	16	7	96	16%	29%	10	26%	55%	
2006	49	27	10	13	8	107	17%	37%	14	30%	67%	
2007	52	14	5	14	4	89	10%	31%	14	26%	57%	
2008	51	0	4	10	7	72	15%	14%	9	28%	42%	
2009	62	20	4	15	13	114	15%	31%	11	25%	55%	
2010	62	55	11	7	4	139	11%	45%	16	22%	67%	
<b>Total, Average of Percentages</b>	<b>596</b>	<b>384</b>	<b>88</b>	<b>142</b>	<b>172</b>	<b>1382</b>	<b>22%</b>	<b>35%</b>	<b>132</b>	<b>32%</b>	<b>67%</b>	



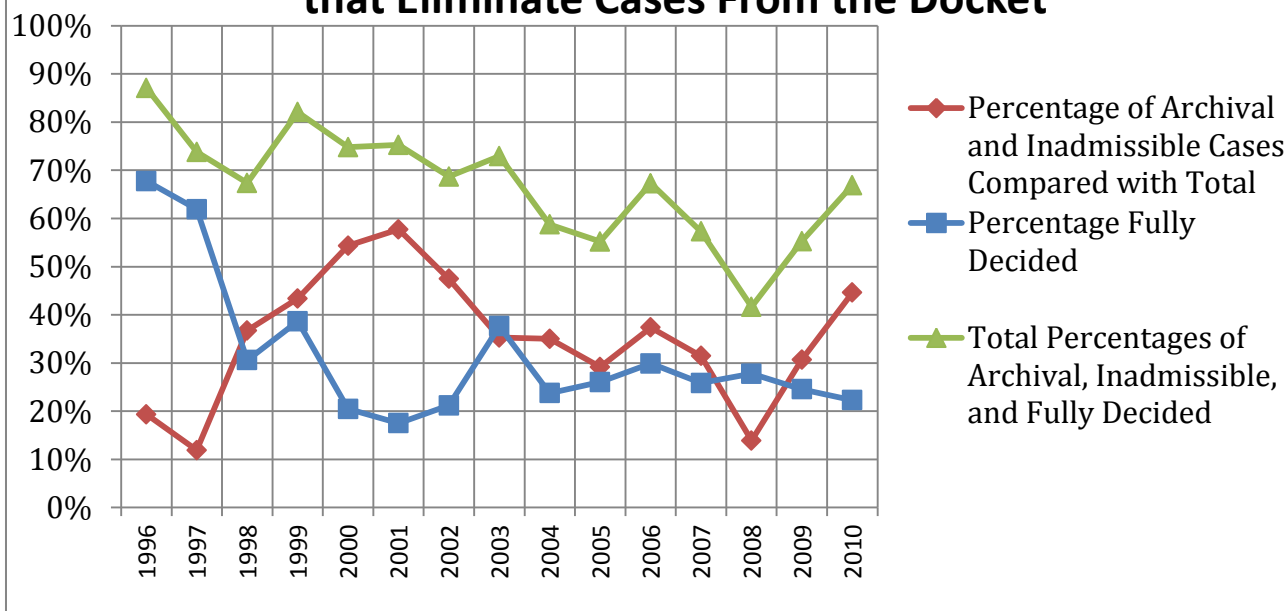
This priority of focusing on the initial stages of petitions was based on the initial working hypothesis that, in the context of the limited resources afforded to the Commission, a stepped approach would be the best strategy in addressing the backlog.<sup>72</sup> The Commission currently estimates that a working average of 18 months delay in the initial stages will be reached by 2013, with 3 months by 2016.<sup>73</sup> The Commission argues that once a more reasonable delay has been achieved in the early stages, additional resources will be allocated to other stages.<sup>74</sup> While it is understandable that the Commission had to begin somewhere, it seems questionable that adopting an approach which does not consider the process as a whole will reduce the Commission's backlog.

<sup>72</sup> Information provided by current and former members of the Secretariat.

<sup>73</sup> Commission's Answers, *supra* note 9, at 5.

<sup>74</sup> Information provided by current and former members of the Secretariat.

### Archival and Inadmissible Petitions and Cases, Fully Decided Cases, and Total Number of Decisions that Eliminate Cases From the Docket



The figure shows that even taking into account the archival decisions and inadmissible cases, the total percentage of fully decided cases and petitions or those eliminated from the Commission’s docket is today less than it was in 1996. Today the Commission eliminates 20% less cases and petitions than it did 15 years ago. It also shows that the Commission now eliminates more cases and petitions through inadmissibility and archival decisions than it does through decisions on merit, friendly settlement, or referrals to the Court. During 1996 the Commission eliminated almost 70% through friendly settlement, merit, or referrals to the Court compared with approximately 20% through archival and inadmissibility. Fifteen years later, the proportion reverted to just over 45% through archival and inadmissibility compared with more than 20% in final decisions based on merit.

#### **b. Wait Times**

Inevitably, the backlog correlates to longer wait times for petitioners. However, the average wait time for petitioners was not readily available because the Commission did not publish any information in this regard and there were no known quantitative studies on the processing of individual petitions by the Commission. The Clinic recognizes that, at least through the publication of reports on cases and petitions, it is possible to quantify part of the delay. Nevertheless, for cases and petitions that have no published decision, it is impossible to know how long cases and petitions have been on the waiting list. To fill this information gap, the Clinic created a database that catalogs the time between the filing of the initial petition and the date of publication for all the published Commission decisions from 1996 through December



2010.<sup>75</sup> Some of this information has now been compiled by the Commission in its responses to the Clinic's questions.

The Clinic's own dataset is limited by the fact that it only includes petitions and cases that have some sort of published adjudication, omitting petitions that are currently waiting in the Commission's dockets. However, this limitation is likely insignificant to the Clinic's final conclusions, because if anything, this omission leads the Clinic to understate the length of wait time for petitioners. According to different sources interviewed by the Clinic, in the past, the Commission would choose to review petitions based on the strength of the petitioner's facts, the legal arguments raised, the attitude of the respondent Government, and/or the constant follow up of the petitioner. Only recently has the Commission, according to the sources interviewed, adopted a first-come, first-served policy.<sup>76</sup> Because previously published decisions were prioritized based on their strength, the Clinic's database necessarily includes a bias towards cases that had a speedier adjudication. The Commission has stated that it takes into consideration the matters which have been waiting the longest for a decision and those questions that may require an urgent response due to the nature of the subject matter.<sup>77</sup>

According to the Clinic's findings, it takes on average over four years for a petition to receive a decision on admissibility and almost two and half more years for a merits decision, leaving petitioners with an average wait time of six and half years for a merits decision. The Commission self-identified an average of 6 years for a final decision.<sup>78</sup> If a case is sent to the Court in lieu of a merits decision, the wait time is even longer.<sup>79</sup>

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<sup>75</sup> The source of the data was the decisions themselves located on the Commission's website, available at <http://www.cidh.oas.org/casos.eng.htm>.

<sup>76</sup> Even so, there are clear exceptions to this rule. See, for instance, the disparities among these three decisions dealing with Brazilian petitions adopted in March 2010. José Do Egito Romão Diniz v. Brazil, Petition 262-05, Inter-Am. Comm'n H.R., Report No. 6/10 (Mar. 15, 2010) (submitted March 14, 2005); Fátima Regina Nascimento de Oliveira and Maura Tatiane Ferreira Alves v. Brazil, Petition 12.378, Inter-Am. Comm'n H.R., Report No. 7/10 (Mar. 15, 2010) (submitted March 22, 2001); Ivanildo Amaro da Silva *et al.* v. Brazil, Petition 1198-05, Inter-Am. Comm'n H.R., report No. 38/10 (Mar. 17, 2010) (submitted October 24, 2005) *all available at* <http://www.cidh.oas.org/casos/10.eng.htm>.

<sup>77</sup> Commission's Answers, *supra* 9, at 18.

<sup>78</sup> Strategic Plan Part 1, *supra* 68, at 20.

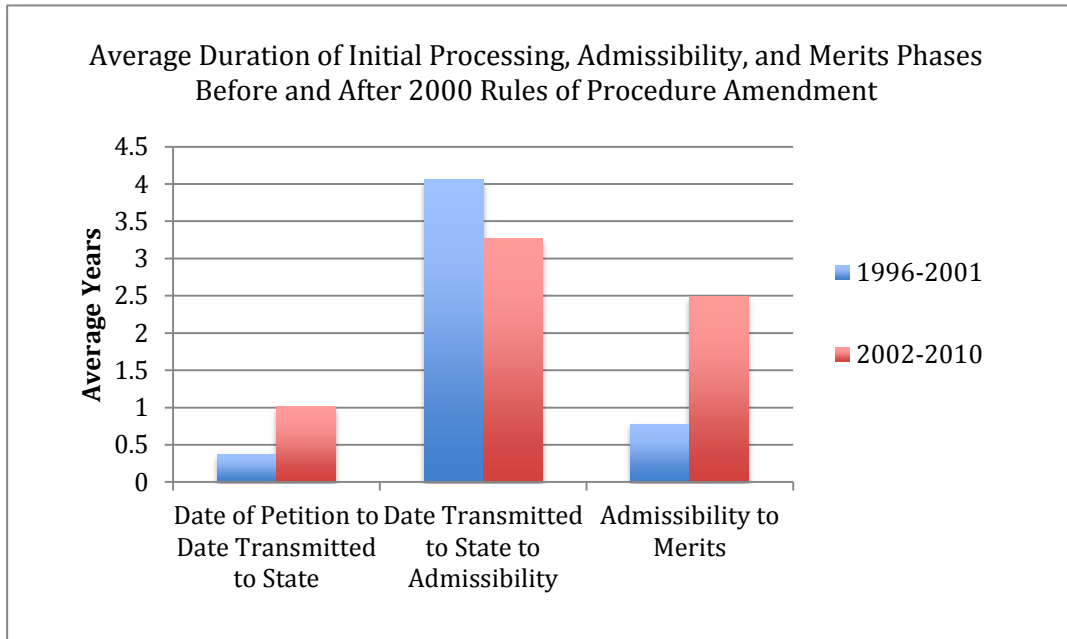
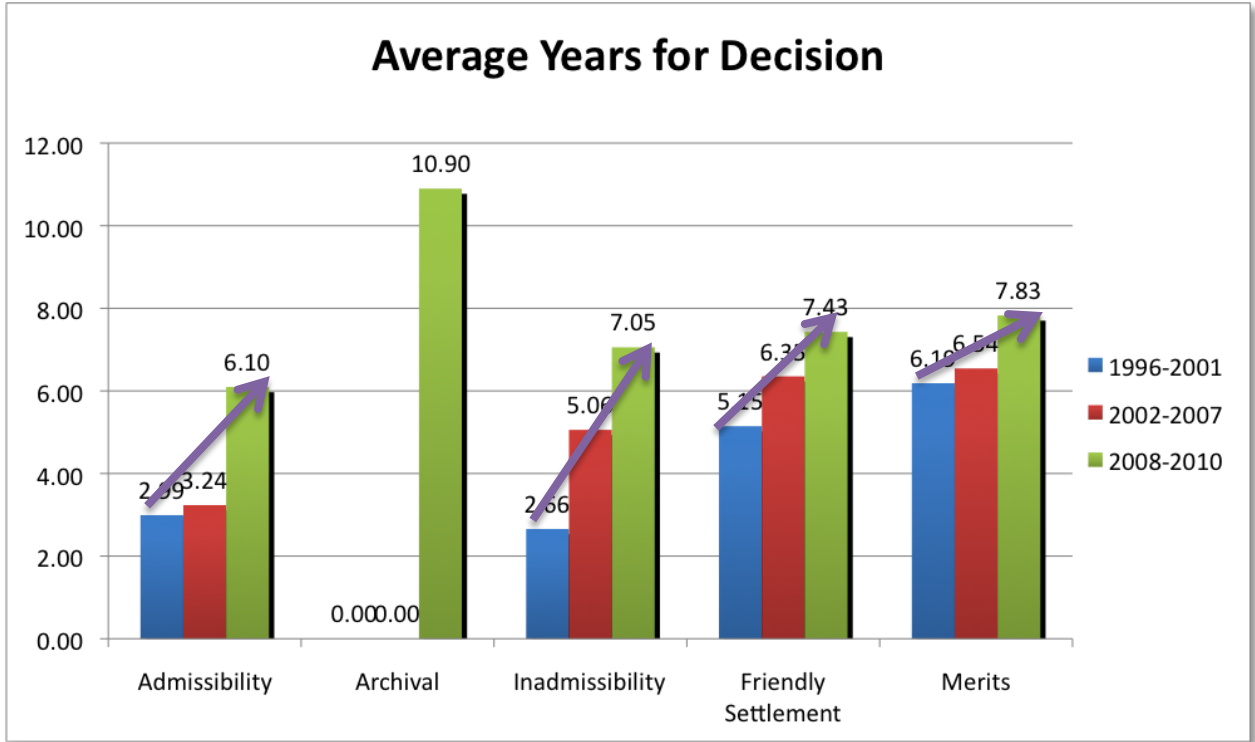
<sup>79</sup> See Section II (B)(2) for a more detailed discussion of the Court's length of procedure.

Average Years for Commission's Decisions						
	Admissibility	Archival	Inadmissibility	Friendly Settlement	Merits	Total
Count of petitions	596	69	136	86	172	1,059
Average Years	4.02	10.90	4.78	6.16	6.51	5.14
Std Dev Year	2.86	4.82	2.98	3.37	3.29	3.63
Median Years	3.25	8.04	4.40	5.87	5.96	4.29
Max Years	20.92	19.85	14.60	20.56	14.67	20.92
Min Years	0.39	2.36	0.31	0.99	1.29	0.31

Moreover, the average number of years for a decision has increased for all four types of decisions<sup>80</sup> in the period covered by the database (1996–2010), so the current wait time is likely even longer than the averages stated above. The average wait time for an admissibility decision was over four years for decisions published between 2002 and 2010, but it was just under three years in the period of 1996–2001, prior to the major amendments to the Rules of Procedure of the Commission (approved in December of 2000). This preliminary data suggests that the Rule changes in 2000 increased the time of adjudication. Similarly, for merits decisions, the average number of years that a petition has to wait is currently higher than it was prior to 2008, the year the Executive Secretariat underwent major restructuring, creating the Registry unit and other measures. Several factors, which will be discussed below, may explain this increase, including the fact that any change requires time for results to materialize and particularly that the Commission is now dealing with its backlog. By processing all petitions and cases, especially the oldest, the average length of the proceedings will necessarily and understandably increase.

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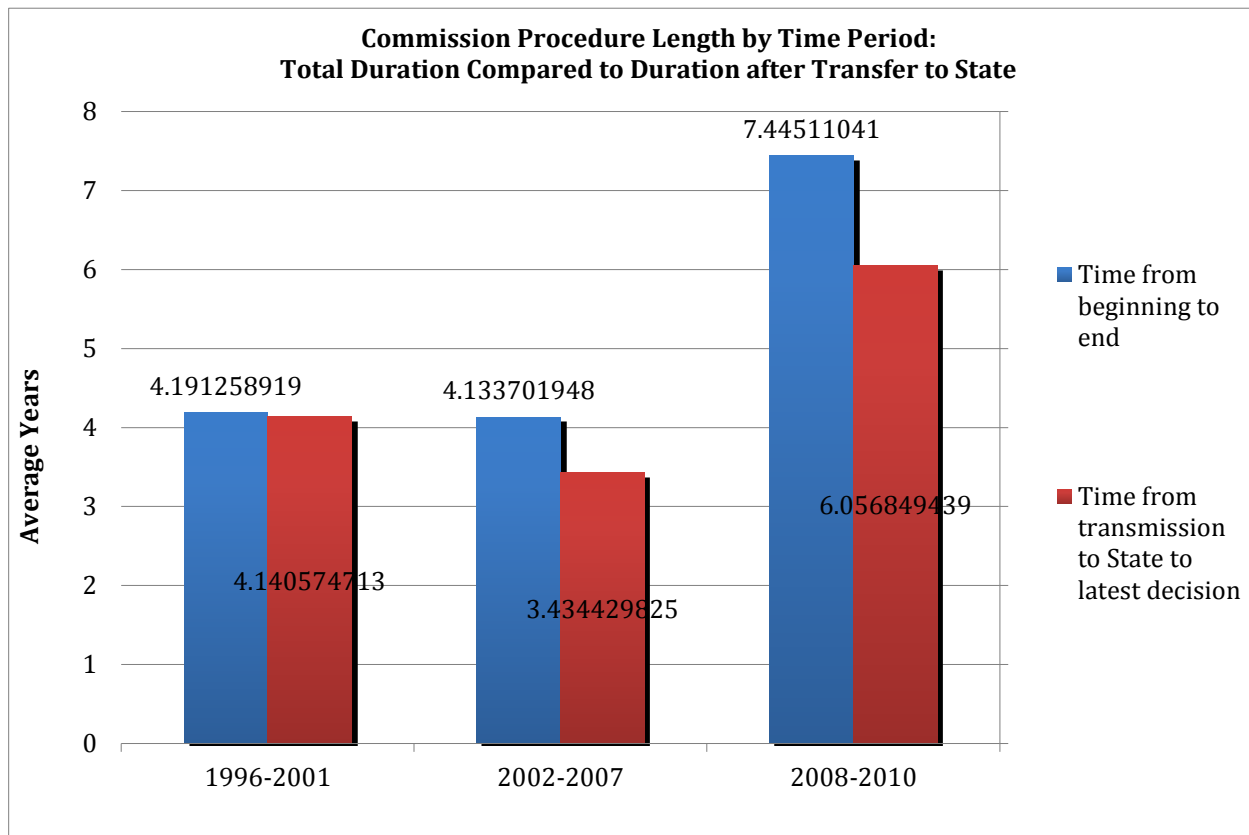
<sup>80</sup> As explained *supra* 70, p. 27, the Clinic excludes archival decisions as they were made public only in the last two years.



Particularly, the stated practice of addressing petitions and cases in chronological order rather than by any other type of priority may contribute to the increase in wait time. The Clinic is encouraged by the Commission’s effort to reduce the delay and backlog in chronological order, but notes that this change, naturally, has increased the average time that it takes for the

Commission to finally resolve each case. This is because the Commission is resolving cases that have already been delayed for some time.

At the same time, the higher average in the Clinic’s data cannot be entirely attributed to this shift in practices, as the upward trend in wait times began before these changes. To account for the disparity of dealing with older petitions in the new chronological order practice, the Clinic also measured the time between when the petition was transmitted to the State and the Commission’s decision on the merits. In this way, the Clinic can control the impact on the average length of the proceedings produced by dealing with and reducing the backlog of new petitions (as done by the Registry). In the period from 1996 to 2001, an average of 4.1 years elapsed from the time a petition was transmitted to a State to the time the Commission decided the case on the merits. From 2002–2007, that time decreased to just under three and a half years.<sup>81</sup> However, in the period from 2008 to 2010, an average of six years elapsed from the petition’s filing with the State to the case’s merits decision. These measurements exclude any time attributed to the new chronological order practice—in the initial processing—but the time of adjudication still increased. Thus, the Clinic acknowledges that the chronological order priority necessarily means the average wait time will increase, but that change does not account for the entire increase in adjudication times of petitions and cases.



<sup>81</sup> During that period however, it still took an average of just over four years from the filing of a petition to the decision on the merits. Thus, more time was spent during the initial processing and the overall average time did not decrease.

The impact of following a chronological order (if that is the case) necessarily would be reflected in the length of the procedure. From 2008 to 2010, the average wait time for an admissibility decision was over six years, and the average wait time for a merits decision was almost eight years. The average wait time will probably continue increasing as the Commission receives petitions and its backlog continues to grow. Thus, following the trend of increased average wait times, for a petition that is submitted today, it may take over a decade before the Commission can reach any sort of conclusion on it.<sup>82</sup> The justification for following a chronological order can be explained from an organizational standpoint and in terms of justice for those who have waited the longest for a decision. But it can also hurt the flexibility that the Commission needs to achieve the other objectives in its mandate.

As expected, the statistics provided by the Commission are even less favorable. According to the information from the IACHR, the current average processing time of cases that have reached the admissibility stage (but that still await a decision) is 70 months (6.83 years). This figure is larger than the one calculated by the Clinic. The IACHR recognizes that the average processing time for cases that have reached the merits stage (which includes time spent on the initial review, admissibility, and merits) and are in the waiting list for a decision is 86 months. Again, this figure is larger than that suggested by the Clinic's data.

## **2. Quantitative Research on the Referral of Cases to the Court**

The length of adjudication for cases in the Court adds to the challenges facing the Commission, because the amount of time a case spends in the Court further increases wait times. Cases before the Court take an average of almost eight years from the time the petition is filed with the Commission to the Court's final resolution. The length of time is somewhat overstated, however, because in some cases the final disposition is not the judgment itself but an interpretation of the Court's judgment, pursuant to Article 68 of the Court's Rules of Procedure.

Cases will spend an average of one year and nine months in the Court after spending an average of more than five years and nine months in the Commission. Because of the Commission's larger caseload and additional procedural stages, an increased amount of time for the Commission to dispose of its cases is expected. Additionally, the IACHR's scope and ease of access means that many complainants do not rely on a legal representative. Many times the Commission does not have all the available information and it is only through the processing of the petition that they complete the body of evidence in the petition or case. Nevertheless, since the Commission is a quasi-judicial body with more relaxed evidentiary rules, more general flexibility, and negotiating powers, one could speculate that the opposite should be true—adjudication should take less time in the Commission and more time in the Court. On the other hand, as mentioned *supra*, the Commission carries out many more functions than the Court does. Thus, not all the Commission's resources, be it time, funding or staff, could be allocated to deal with individual complaints.

The Clinic found no significant difference in the time cases spent in the Commission's proceedings between those that were finally decided by the Commission and those that were

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<sup>82</sup> It will be important for the Commission to examine if the transfer of so many human resources to the Registry section has had a negative impact on the overall duration of the process.

eventually decided by the Court. The data indicates that cases filed with the Commission and eventually submitted to the Court were disposed of by the Commission an average of nine months faster than those that were never submitted to the Court. However, this discrepancy can be explained by the way the Clinic measured the time periods and the process of the publication of merits reports. The Clinic’s database records the date of *publication* of merits reports by the Commission (i.e. the publication of an Article 51 report), rather than the initial, unpublished adoption of the merits report (i.e. the publication of an Article 50 report).<sup>83</sup> There is significant delay between the adoption and publication of merits reports because the Commission is required to grant time to the State to comply with the Commission’s preliminary merits report before adopting a final merits report and deciding its publication.<sup>84</sup>

Court: Average Time by Year			
Year	Average of Years from Filing of Petition with Commission to Filing with Court	Average of Years from File Date with Court to Merits	Average of Years from Beginning to End
1996	3.111	4.275	9.053
1997	4.367	1.492	7.026
1998	4.941	1.908	8.061
1999	2.176	2.225	5.637
2001	2.644	2.590	6.162
2002	3.916	2.583	7.683
2003	7.458	1.861	9.412
2004	5.541	1.810	7.416
2005	5.200	1.611	6.889
2006	5.722	1.485	7.262
2007	9.793	0.953	11.000
2008	8.223	1.624	10.301
2009	6.743	1.466	8.326
2010	7.265	1.219	8.483
Grand Total	5.788	1.741	7.947

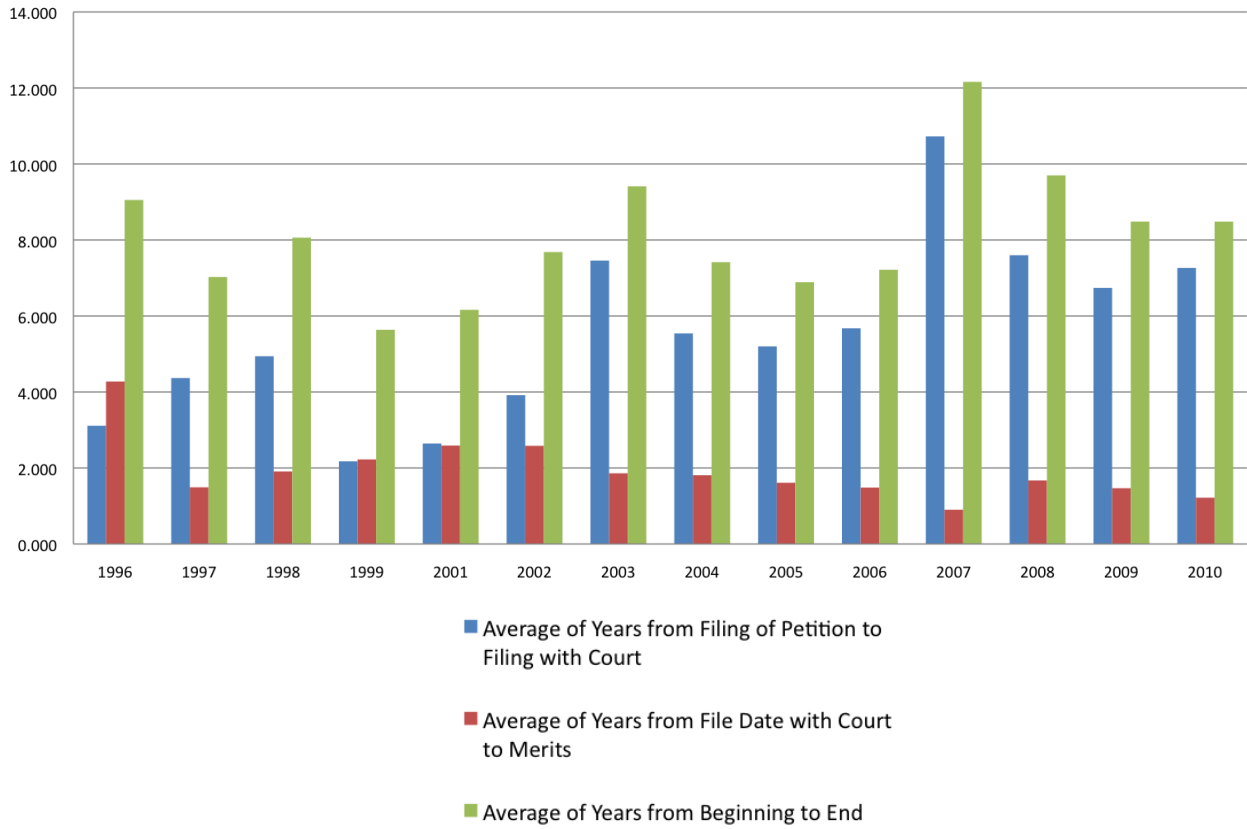
<sup>83</sup> These names refer to the articles in the Convention that describe the reports. American Convention, *supra* note 5, arts 50–51; *See also* Commission Rules of Procedure, *supra* note 6, arts. 45, 47.

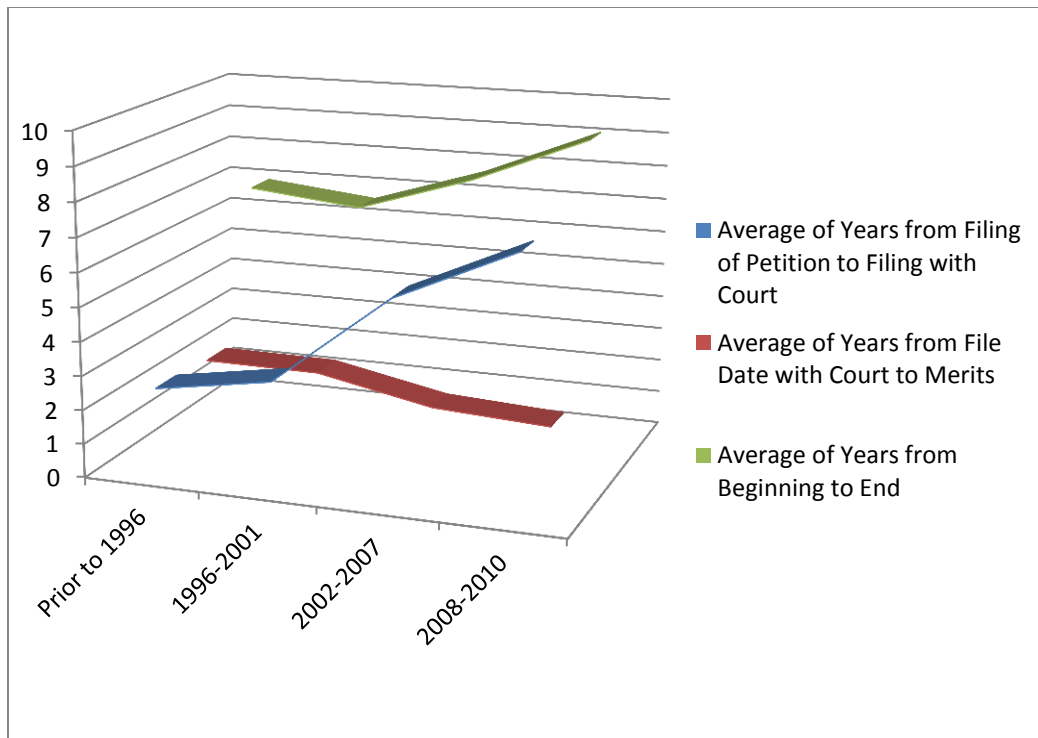
<sup>84</sup> Commission Rules of Procedure, *supra* note 6, art. 47.

**Court: Average Time by Period (Years)**

Year Period	Average of Years from Filing of Petition with Commission to Filing with Court	Average of Years from File Date with Court to Merits	Average of Years from Beginning to End
1989-1996	2.53	2.38	6.93
1996-2001	3.09	2.36	6.57
2002-2007	5.80	1.68	7.67
2008-2010	7.37	1.49	9.08

**Average Years for Disposition of Cases in Court**





The quantitative data on the Court shows that the time that a petition/case takes to be processed by the Commission is much longer than the time to process a case by the Court. As previously explained, that finding may be expected because the Commission has a larger volume of cases to deal with and a variety of functions. At the same time, the duration within the Commission has increased while the duration of procedure for those same cases in the Court has decreased. Some staff members within the Commission note that the cases it sends to the Court are more straightforward or more likely to succeed on the merits.<sup>85</sup> In other words, the argument is that the Commission now processes the cases in a more thorough and more judicialized manner, which requires more processing time. While that may partly explain the longer period in the Commission overall, the fact remains that the duration of the Commission's case processing has increased while that of the Court has decreased. The Clinic has not yet measured the effects on the Court's processing time caused by the exponential growth in the number of cases referred by the IACHR during the last two years.

### 3. Qualitative Challenges within the Commission's Process

In addition to the quantitative challenges, the Commission faces qualitative obstacles that weigh down the Commission's process. The Commission struggles with lack of funding, problems with the petition intake system, duplication, and limited access to the online system. In addition, the petition intake system encourages too many non-receivable petitions. Furthermore, the system by which petitioners and States submit information, even after the initial filing, can lead to delays in the Commission's procedure. On top of all of the formal opportunities to submit information to the Commission that the Rules afford, there is an informal practice of allowing

<sup>85</sup> Telephone Interview with staff member of the Executive Secretariat, Inter-Am. Comm'n H.R. (Oct 5, 2010) [hereinafter Executive Secretariat Interview]. The staff member wished to remain anonymous.



States and petitioners to submit relevant information at later stages. Finally, there is an inconsistent application of Rules and a lack of public information regarding procedural decisions.

As described *supra* section II(A)(3), the OAS does not provide adequate funding for the Commission's manifold projects. As a result, the Commission relies on additional and voluntary funding from some Member States, observer States, and voluntary donations from independent institutions. Contributions by Member States may produce an apparent conflict of interest for the Commission, which must decide cases impartially with respect to those Member States.<sup>86</sup> More importantly, this additional funding may not be sustainable. Because the funds from outside of the OAS budget are voluntary, contributions depend on the priorities and financial abilities of funders, two factors that are variable.<sup>87</sup> Additionally, outside organizations tend to commit new funds to special projects, rather than the core functions of the Commission including the processing of cases.<sup>88</sup>

From the initial submission of a petition, there are difficulties within the Commission's process, beginning with the Commission's petition intake system. First of all, the Commission does not use its online petition system to its full potential.<sup>89</sup> If a petitioner submits an online petition, he or she still must submit a signed paper copy. In some occasions, the Executive Secretariat registers these multiple submissions separately. In compiling its case database, the Clinic found several petitions with inconsistent dates in its reports.<sup>90</sup> The Clinic believes that some of these inconsistencies result when a petition was submitted more than once through different channels. If the petition is registered multiple times, then valuable resources are expended as staffers may begin to process a petition twice, thus duplicating the intake process. Even if the petition is not registered twice, the staffers of the Commission would still need to read all the different and subsequent versions to be sure that they are the same.

Only recently, the Commission improved the visibility of the online petition system.<sup>91</sup> The advantage of the online system is that the Commission automatically has a digital version of the petition. Beginning with a digital version can save processing time and reduce multiple registration errors. If more petitioners took advantage of the online system, then the Executive Secretariat could spend more time evaluating the petitions and less time processing them. The Clinic recognizes, however, the lack of universal internet access throughout the Americas, and so a purely digital system can never be fully implemented as it would limit access to justice for some people.

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<sup>86</sup> See James L. Cavallaro & Stephanie Erin Brewer, *Reevaluating Regional Human Rights Litigation in the Twenty-First Century: The Case of the Inter-American Court*, 102 AM. J. INT'L L. 768, 783 (2008).

<sup>87</sup> *Id.*

<sup>88</sup> Executive Secretariat Interview, *supra* note 86.

<sup>89</sup> The Commission stated in its communication with the Clinic that 33% of petitions were received using the online formula.

<sup>90</sup> See, e.g., *Jimenez v. Costa Rica*, Petition 12.136, Inter-Am. Comm'n H.R. Report No. 97/10 ¶¶1, 4 (July 12, 2010), available at <http://www.cidh.oas.org/casos/10.eng.htm>. ("On May 12, 1998, the Inter-American Commission on Human Rights received a petition presented by Seguis mundo Gerardo Porras Jiménez . . . [t]he petition was received by the IACHR on August 27, 1998.")

<sup>91</sup> <http://www.cidh.oas.org/DefaultE.htm>.

The current petition intake system encourages too many petitions that cannot be received. Information is publicly available regarding the admissibility requirements for petitions, but it is limited to the Rules of Procedure, and does not provide specific examples.<sup>92</sup> Most recently, the Commission added to the available information a detailed informative pamphlet giving better explanations of the online petition forms. These are welcome initiatives in that they can help reduce the number of petitions which cannot be processed. However, part of the pamphlet and form still use highly legal and abstract language which can be difficult to understand for anyone lacking technical understanding of the Commission. The lack of understandable information and concrete examples of the kind of petitions that are not eligible may account for some of the almost ninety percent of petitions unable to be received by the Commission. The backlog of petitions waiting for initial review largely consists of petitions that are insufficient to pass through the pre-screening phase, and this prevents legitimate claims from receiving the attention that they need.<sup>93</sup> These inadequate petitions may take less time than a receivable petition, but they still take time and resources.

There is a potential for confusion regarding the functions of the group that perform the intake of petitions, the Registry. This is because the term “Registry” in other tribunals is generally used to refer to the units that perform activities assigned to the Executive Secretariat of the Commission.<sup>94</sup>

The system by which petitioners and States submit information and evidence, even after the initial filing, can lead to delays in the Commission’s procedure. Currently, petitioners submit an initial petition at the very beginning. They may later submit additional information to meet the requirements of the Rules, pursuant to Article 26.2, and may even later submit additional information and evidence in written form or via a hearing, pursuant to Article 30.5. Once the case is opened, the petitioner can submit another set of observations and evidence (admittedly these are different because they deal with the merits of the case, rather than admissibility) prior to Article 37.1, and later has yet another opportunity to present evidence by request of the Commission, prior to Article 37.4.

Likewise, the State presents its information and evidence on admissibility to the Commission after the Commission initially transfers the petition to the State.<sup>95</sup> The State has a second opportunity to present evidence in writing or in hearing,<sup>96</sup> has a third chance to submit additional observations on the merits,<sup>97</sup> and a fourth opportunity to present information in written

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<sup>92</sup> <http://www.cidh.org/basicos/english/Basic18.RulesOfProcedureIACHR.htm>.

<sup>93</sup> In 2010, a total of 1676 petitions were evaluated, with only 275 receiving a decision to process (deemed receivable) - Annual Report 2010, *supra* note 61, ch. III(B)(1)(c).

<sup>94</sup> See, e.g., *The “Registry”*, THE INTERNATIONAL COURT OF JUSTICE, <http://www.icj-cij.org/Registry/index.php?p1=2> (last visited January 4, 2011); *“Registry”*, INTERNATIONAL CRIMINAL COURT, <http://www.icc-cpi.int/Menu/ICC/Recruitment/Internships+and+Visiting+professionals/Opportunities/Registry.htm> (last visited January 4, 2011); *Role of the “Registry”*, EUROPEAN COURT OF HUMAN RIGHTS, <http://www.echr.coe.int/ECHR/EN/Header/The+Court/How+the+Court+works/Registry/> (last visited January 4, 2011).

<sup>95</sup> Commission Rules of Procedure, *supra* note 6, Article 30.3.

<sup>96</sup> *Id.* Article 30.5.

<sup>97</sup> *Id.* Article 30.7.

form or via a hearing.<sup>98</sup> All of these chances to submit information delay the Commission's decision because the Commission cannot decide the case without all of the facts.

On top of all of the formal procedural opportunities to submit information to the Commission that the Rules afford, there is a practice of requesting and/or allowing States and petitioners to submit relevant information at later stages. In most cases and petitions, the Commission requests observations from the petitioners and States multiple times, going beyond what the Rules require.<sup>99</sup> This practice might be encouraged or necessitated by the current backlog of cases. Since cases are already waiting in dockets, requiring early submission of evidence may be seen as arbitrary. Furthermore, after years of delays, part of the information may become outdated both in terms of the evolution of the factual situation and developments in the case law or practice of the system. On the other hand, the practice allowing the late submission of information encourages parties to withhold information that reveals the strengths and weaknesses of their cases. This kind of strategic maneuvering prevents the Commission from drafting reports earlier on in the process and in some occasions from encouraging parties to enter into friendly settlement negotiations.

In addition to flexibility regarding the timely submission of information, another challenge for the Commission's procedure is the inconsistent use of rules that may speed up the process. For example article 36.4,<sup>100</sup> formerly article 37.3,<sup>101</sup> allows the Commission to combine the decisions on admissibility and merits in certain cases, but it is not consistently applied and it is unclear why it is applied in some cases and not others.

For example, in 2010, the Commission published seven reports, other than archival decisions, dealing with Brazilian cases.<sup>102</sup> Six reports are on admissibility and a final one is a joint admissibility and merits report. Out of those seven petitions and cases, in two of them, the Brazilian Government had not presented any allegations challenging the admissibility of the petitions. Nevertheless, the Commission took absolutely opposite approaches in dealing with those two cases.

Petition 12.308 was filed with the Commission on May 22, 2000. Ten months later, on March 22, 2001, petition 12.378 was filed. In both cases, the State did not respond to the petition. On March 17, 2010, the Commission adopted Report 37/10<sup>103</sup> on the admissibility and merits of petition/case 12.308. In that case, due to the silence of the State, the Commission

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<sup>98</sup> *Id.* Article 65.

<sup>99</sup> *E.g.* Vargas v. Paraguay, Case 12.431, Inter-Am. Comm'n H.R., Report No 121/10, ¶¶6-14 (Oct. 23, 2010) available at <http://www.cidh.oas.org/casos/10.eng.htm>. (listing fifteen occasions during the merits phase in which the alleged victim submitted information and observations after the report on admissibility, No. 84/03, and ten occasions in which the State submitted additional information or comments at the Commission's request).

<sup>100</sup> Commission Rules of Procedure, *supra* note 6, art. 36.4.

<sup>101</sup> Inter-Am. Comm'n H.R., Rules of Procedure of the Inter-American Commission on Human Rights art 37.3 (Oct. 25 2002) [hereinafter 2002 Commission Rules of Procedure]. These rules were adopted in December of 2000 and implemented in 2001. However, the Commission made minor changes and published the revised rules in 2002. Throughout the document, these reforms are referred to as the 2000 changes, but their actual implementation occurred in 2001.

<sup>102</sup> There are five Archival Reports on Brazilian cases in 2010.

<sup>103</sup> Manoel Leal De Oliveira v. Brazil, Case 12.308, Publication (Article 51), Inter-Am. Comm'n H.R., Report N° 37/10 (March 17, 2010), available at <http://www.cidh.oas.org/casos/10.eng.htm>.

decided to join the admissibility to the merits of the case, pursuant to Article 37.3 of the Rules of Procedure.<sup>104</sup> Thanks to this decision, approximately 10 years after the submission of the initial petition, the Commission was able to rule on the merits of the case.

Two weeks earlier, on March 3, 2010, the Commission adopted a report declaring the second petition, petition 12.378, admissible.<sup>105</sup> Even though the State was equally silent in this case almost nine years after the filing of the petition, the Commission ruled on admissibility alone. The Commission will now have to deal with the merits of the case, granting time first to the petitioner and then to the State to file their final arguments on the merits. Then the Commission will adopt a preliminary report on the merits, grant the State at least two months to implement the recommendations of the Commission, then adopt a final merits report, grant additional time and eventually decide on the publication of the report.<sup>106</sup> According to the Clinic's data, this merits stage takes several years.

In other words, in two cases dealing with the silence of the same State, the Commission took opposite solutions without any explanation. In terms of delays, one case will take at least two or three more years to be decided due to this inconsistency. Additionally, in one situation, the Secretariat was required to submit a draft admissibility report and the Commissioners to spend time considering that report. Moreover, the Commission had to spend financial resources translating such report into at least English and Spanish in addition to the Portuguese version. Such a process will need to be repeated in the merits stage. In the other case, the Commission avoided the time and resources by joining the admissibility and merits decisions.

The lack of public information regarding procedural decisions,<sup>107</sup> such as information explaining the inconsistency just described, is a persistent obstacle in evaluating the Commission's process. During its initial research, the Clinic found it almost impossible to find public information on some of the criteria used by the Commission. For instance, the Clinic was informed verbally but under the condition of maintaining the confidentiality of the name of the person who provided the information on the operation of the Registry. The Clinic attempted to obtain public data on the new petitions that get priority and was informed that there is no public information in this regard.<sup>108</sup> However, the Clinic commends the Commission for the responses it received as of October 4<sup>th</sup> 2011. These answers provided the Clinic with matters regarding priority and other such important issues. The Commission stated that priority was given to matters related to protection of life and personal integrity, pushing aside the processing of petitions and cases, as well as the review of general situations. Whilst the Clinic commends the Commission for taking time to effectively respond to its questions, it regrets that this data is not more widely available.<sup>109</sup>

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<sup>104</sup> *Id.* at 29.

<sup>105</sup> Fátima Regina Nascimento De Oliveira and Maura Tatiane Ferreira Alves v. Brazil, Petition 12.378, Inter-Am. Comm'n H.R., Report No. 7/10 ¶14 (Mar. 15, 2010), available at <http://www.cidh.oas.org/casos/10.eng.htm>.

<sup>106</sup> This is assuming that the Commission would not refer the case to the Court.

<sup>107</sup> Besides the admissibility and merits reports themselves.

<sup>108</sup> Registry Interview, *supra* note 19.

<sup>109</sup> Commission's Answers, *supra* 9, at 18.

The same situation happens through the rest of the proceedings. For instance, the Commission stated that now deals with petitions and cases in chronological order, but some cases receive priority and are put in a faster docket. The Commission has established that it should give priority status to 10% of petitions and immediately evaluate those petitions.<sup>110</sup> Nevertheless, there is no public document discussing how the Commission decides to give priority to certain petitions or cases over others. In communications with the Clinic, the Commission outlined circumstances in which some cases were afforded priority. The Commission stated that there is a ‘crucial importance in identifying colorable claims and offering them every chance to be solved.’ The Commission explained that in order to understand or identify the criteria, one needs to look to individual cases as a guide. For any petitioner however, such a wealth of documentation would be overwhelming.

The Clinic understands that as a quasi-judicial body, the Commission needs to have flexibility in the processing of petitions in order to encourage State engagement, friendly settlements, and strengthen the possibilities of its impact. Thus, the existence of strict rules regulating the administration of the process could hamper the effectiveness of the IACHR. The Clinic only proposes more consistency and transparency but not to lose the flexibility of the Commission as it is an essential tool at its disposal.

A useful tool for the Commission to increase transparency, and efficiency, is its Document Management System (“DMS”), described in more detail *infra* section III(B). This system has been publicly commended,<sup>111</sup> and the Clinic recognizes its success, although its potential has yet to be fully realized. According to the communication with the Clinic, the DMS only contains petitions and cases since June 2010 (with the exception of annexes of petitions under study), but not older petitions and cases, and the Commission currently has no plan to digitize those older cases.<sup>112</sup> From 2002, all petitions were included systematically in PCMS, a system for managing cases and matters that stores the basic information of each matter that has been processed or is pending before the IACHR in the ‘individual petition system.’<sup>113</sup> It appears (again there was no clear public information on this) that the reason not to digitalize all pending petitions and cases is a question of resources. Nevertheless, the inclusion of only new petitions and cases into the DMS means that for several years (as the Clinic’s study shows, there are cases that were pending with the Commission for two decades) the Commission will be unable to process all its petitions and cases in a digital manner, contrary to its goal that all documentation entering the IACHR be registered digitally, that documentation sent from the Secretariat be digital, and that digital communication with States and petitioners be promoted.<sup>114</sup>

In part, it appears that the DMS also does not meet its full potential due to lack of staff assimilation. A staff member of the Executive Secretariat has stated that many of the

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<sup>110</sup> Inter-Am. Comm’n H.R., *Strategic Plan 2011–2015, Part II: Programs and Action Plans*, at 5 (February 2011) [hereinafter Strategic Plan Part II].

<sup>111</sup> Press Release, Inter-Am Comm’n H.R., IACHR Pleased with Award Nominations for its Document Management System, No. 16/11(March 1, 2011), available at <http://www.cidh.oas.org/Comunicados/English/2011/16-11eng.htm><http://www.cidh.oas.org/Comunicados/English/2000/Press18-00.htm>.

<sup>112</sup> Commission’s Answers, *supra* note 9 at 22.

<sup>113</sup> *Id.*

<sup>114</sup> *Id.* at 7.

Commission staff members currently have not fully assimilated to the DMS.<sup>115</sup> However, the Commission stated in its communication with the Clinic that “[a]ll staff members received training [regarding the use of PCMS and DMS] at the points these systems were put into practice, and incoming staff, as well as fellows and interns, receive training regarding the use of PCMS and DMS upon their arrival. Staff may receive additional customized training as needed.”<sup>116</sup>

### C. Effect of the Slow Process on Justice and the Promotion of Human Rights

As the Clinic’s data indicates, the Commission’s procedures take too long and the IACHR decides too few cases per year to significantly reduce the backlog and wait times. As a result, the Commission currently cannot guarantee petitioners speedy access to justice. The Court has said that access to justice requires a resolution of cases within a reasonable time:

The right of access to justice implies that the solution of the controversy should occur within a reasonable term, since a prolonged delay could constitute in itself a violation of the right to a fair trial.<sup>117</sup>

While the Clinic does not argue that the specific rights and obligations enshrined in the Convention apply directly to the Commission or the Court, it maintains that the underlying principles of the administration of justice, including international justice, such as the right to a speedy trial, are similar. Having to wait at least two years for an initial review, another two years for an admissibility decision, and yet another two years for a merits decision likely diminishes a petitioner’s sense of “justice.” Additionally, long wait times might discourage victims from filing a petition at all, or diminish the impact of the Commission’s decisions on human rights in the particular State as they are issued several years after an event happens.<sup>118</sup>

This last consideration is particularly true in respect of merits decisions. Merits decisions likely have the most potential to promote human rights, since they afford the Commission the opportunity to make recommendations directly to States to remedy the particular case and address the underlying problem. Thus, it is significant that compared with the volume of petitions the Commission receives yearly, only a handful receives merits decisions.<sup>119</sup> Many of these petitions do not pass the pre-screening by the Commissions, but many are instead just languishing in the system. Further, the Court requires “the solution of the controversy” to occur

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<sup>115</sup> Registry Interview, *supra* note 19.

<sup>116</sup> Commission’s Answers, *supra* 9, at 22.

<sup>117</sup> Case of the “Las Dos Erres” Massacre v. Guatemala, Preliminary Objection, Merits, Reparations, and Costs Judgment, Inter-Am. Ct. H.R. ¶132 (November 24, 2009) (internal citations omitted) [hereinafter “Las Dos Erres” Massacre]. Of course, the Clinic does not suggest that the IACHR’s delay makes its responsibility similar to that of a State which delays the investigation of a massacre.

<sup>118</sup> In addition, petitions can reach the Commission only after the exhaustion of domestic remedies, which may also take several years.

<sup>119</sup> This appears to be a chronic problem as well. According to one study, between 1971 and 1981, the Commission received 6,756 petitions but published only 437 reports or only 6.5% of the petitions received. According to the same study, between 1975 and 1990, the Commission published only 267 reports on cases. See ILSA, *Aportes*, *supra* note 59, at 58.

within a reasonable time.<sup>120</sup> A petitioner's sense of access to justice may be tied not only to when the adjudicating body begins to handle a petition or case, but when the body *resolves* the case. As a result, it is particularly problematic that the Commission issues such a small number of merits decisions in comparison to other decisions. This issue may be exacerbated by the fact that the Commission's decisions do not act as precedent. When adjudicative bodies' decisions constitute binding precedent, even a small number of decisions per year powerfully shape the law. In the case of the Commission, the impact of decisions is much more limited.<sup>121</sup>

Commentators have long emphasized (and often criticized) the Commission's struggle to deal with its petitions in a timely manner.<sup>122</sup> In a recent article, Lea Shaver argues that the low number of cases that the Court resolves is an apparent weakness in the Court that dramatically limits its effectiveness.<sup>123</sup> In the remainder of this report, the Clinic argues that the low number of cases resolved in the Commission likewise impairs the effectiveness and efficiency of the Commission. The Clinic applauds the Commission for acknowledging the need for increased efficiency and for enacting several procedural reforms in an effort to reduce the backlog and wait times.<sup>124</sup> But as the Clinic's data reflects, these reforms have yet to significantly impact the overall problem. Average wait times exceed six years—an unreasonable amount of time for “access to justice.” The Clinic recognizes that if the Commission concentrates on dealing with its backlog, the average time will necessarily increase. But, if the increase in time is not tied to the reduction of the backlog as the Clinic's study shows, there is a problem. In addition, most of the Commission's recent decisions continue to be admissibility decisions and not on the merits. This is the consequence of the 2000 procedural reform that should be reversed as there is a need to fully resolve the cases.

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<sup>120</sup> “Las Dos Erres” Massacre, *supra* note 87, ¶132.

<sup>121</sup> Although the Clinic considers that the decisions of the Commission in individual cases should serve as guiding principles to all the OAS Member States and not only to those involved in a particular case.

<sup>122</sup> See Committee on International Human Rights, *Inter-American Commission on Human Rights: A Promise Unfulfilled*, 48 REC. OF THE ASS'N OF THE B. OF THE CITY OF N.Y. 589, 602–04 (1993); Shelton, Dinah, *Improving Human Rights Protections: Recommendations For Enhancing The Effectiveness of the Inter-American Commission and Inter-American Court of Human Rights*, *American University International Law Review* 3, no. 2 (1988): 323–337 at 323. HECTOR FAUNDEZ LEDESMA, *EL SISTEMA INTERAMERICANO DE PROTECCIÓN DE LOS DERECHOS HUMANOS*, 507 (2004); Ariel Dulitzky, *La Duración del Procedimiento ante el Sistema Interamericano de Protección de los Derechos Humanos: Responsabilidades Compartidas*, in *EL FUTURO DEL SISTEMA INTERAMERICANO DE PROTECCIÓN DE LOS DERECHOS HUMANOS* (Juan E. Méndez and Francisco Cox ed., IIDH 1998); Robert K. Goldman, *History and Action: The Inter-American Human Rights System and the Role of the Inter-American Commission on Human Rights*, 31 *HUM. RTS. Q.* 856, 881–82 (2009).

<sup>123</sup> Lea Shaver, *The Inter-American Human Rights System: An Effective Institution for Regional Rights Protection?* 9 *WASH. U. GLOBAL STUD. L. REV.* 639 (2010).

<sup>124</sup> See Annual Report 2007, *supra* note 61, ch. I, ¶ 10 (“the Commission has made several efforts recently to increase its efficiency in discharging its mandate to protect the peoples of the Hemisphere more effectively”).





### III. Procedural and Administrative Reforms and Their Impact on the Efficiency of the Commission

Since 2000, the Commission has enacted several major procedural and administrative changes, some of which were specifically designed to deal with the backlog and procedural delays. Additionally, the Commission increased its technological capacity in order to fine-tune its procedures. These changes have produced some positive impacts, but need to be strengthened further. Most significantly, the Commission has made extensive rule changes two times that drastically altered the structure of proceedings. Regrettably, the first change in 2000, dividing the procedure into admissibility and merits, has moved the concentration of resources to the preliminary stages of the procedure and lengthened the overall duration time. Thus, the Clinic encourages the Commission to revert it.

#### A. 2000 Rules of Procedure Reforms

In the last decade, the Commission has implemented two sets of changes to the Rules intended to improve the processing of individual complaints. The most extensive rule revision occurred in 2000.<sup>125</sup> Although the reduction of the backlog and the timely resolution of petitions and cases were not explicit goals in the 2000 amendments, many changes did appear to address these issues. However, by splitting the admissibility phase and the merits phase into two separate stages, the overall impact of the 2000 changes to the duration and backlog was negative.

##### 1. Admissibility

The most drastic change in 2000 split the process into two stages: the admissibility phase and the merits phase.<sup>126</sup> Before 2000, the Commission generally ruled on both the admissibility and merits of a case in a *single* joint decision.<sup>127</sup> In the new admissibility phase, the amendments required the Commission to decide whether petitions met the initial requirements delineated in the new rules.<sup>128</sup> The effect of this change was felt immediately: between 1996 and 2001, the Commission adopted 146 independent admissibility determinations. In the subsequent five years, between 2002 and 2007, that number almost doubled to 275.

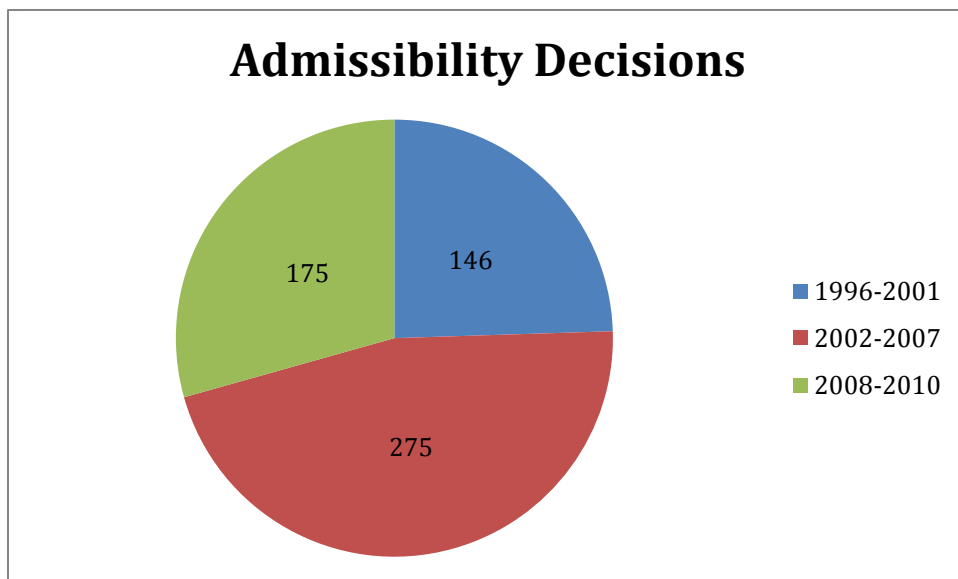
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<sup>125</sup> For a flowchart of the Commission procedures after 2000, see Appendix I.

<sup>126</sup> Press Release, Inter-Am Comm'n H.R., Conclusion of the 109th extraordinary session, ¶11, No. 18/00 (Dec. 8, 2000), available at <http://www.cidh.oas.org/Comunicados/English/2000/Press18-00.htm> [hereinafter Press Release 18/00].

<sup>127</sup> See MONICA PINTO, LA DENUNCIA ANTE LA COMISIÓN INTERAMERICANA DE DERECHOS HUMANOS 83 (Editores del Puerto 1994).

<sup>128</sup> *Id.*



The rules included a timeline for the submission of admissibility considerations that did not allow any extensions beyond three months.<sup>129</sup> Finally, the new rules stipulated that the admissibility phase would conclude with a report on the admissibility of individual petitions, before proceeding to the merits phase.<sup>130</sup> The Clinic recognizes that the decision to create an independent admissibility stage was and unfortunately still is greatly encouraged and supported by States and several NGOs.

Several provisions in the 2000 Rules allow the Commission to speed up the process, particularly in urgent and serious cases. For example, Article 30.4 and 30.7 the Commission was allowed to request the State to present its response on the admissibility and the merits of the matters within a reasonable time (rather than only on the admissibility and within three months). Or Article 37.3 that permitted the Commission in “exception circumstances” to open a case and defer its treatment of admissibility until the debate and decision on the merits.

## 2. Merits

The new rules established evidentiary standards for the separate merits stage.<sup>131</sup> In this phase, petitioners were allowed to submit additional observations. If a State did not respond when the Commission transmitted the petition to the State for observations, and as long as other information on the record did not indicate otherwise, then the petitioner’s facts were presumed true.<sup>132</sup> The Commission also included more specific rules on gathering facts from witnesses and the way that evidence was to be presented and preserved so that it could be admissible later in the Court.<sup>133</sup> Additionally, this phase included clearer guidelines regarding the friendly settlement stage, imposing a greater obligation on the Commission to facilitate friendly

<sup>129</sup> 2002 Commission Rules of Procedure, *supra* note 102, art 30.4.

<sup>130</sup> Press Release 18/00, *supra* note 127, ¶11.

<sup>131</sup> 2002 Commission Rules of Procedure, *supra* note 102, art. 63.

<sup>132</sup> *Id.* art. 39.

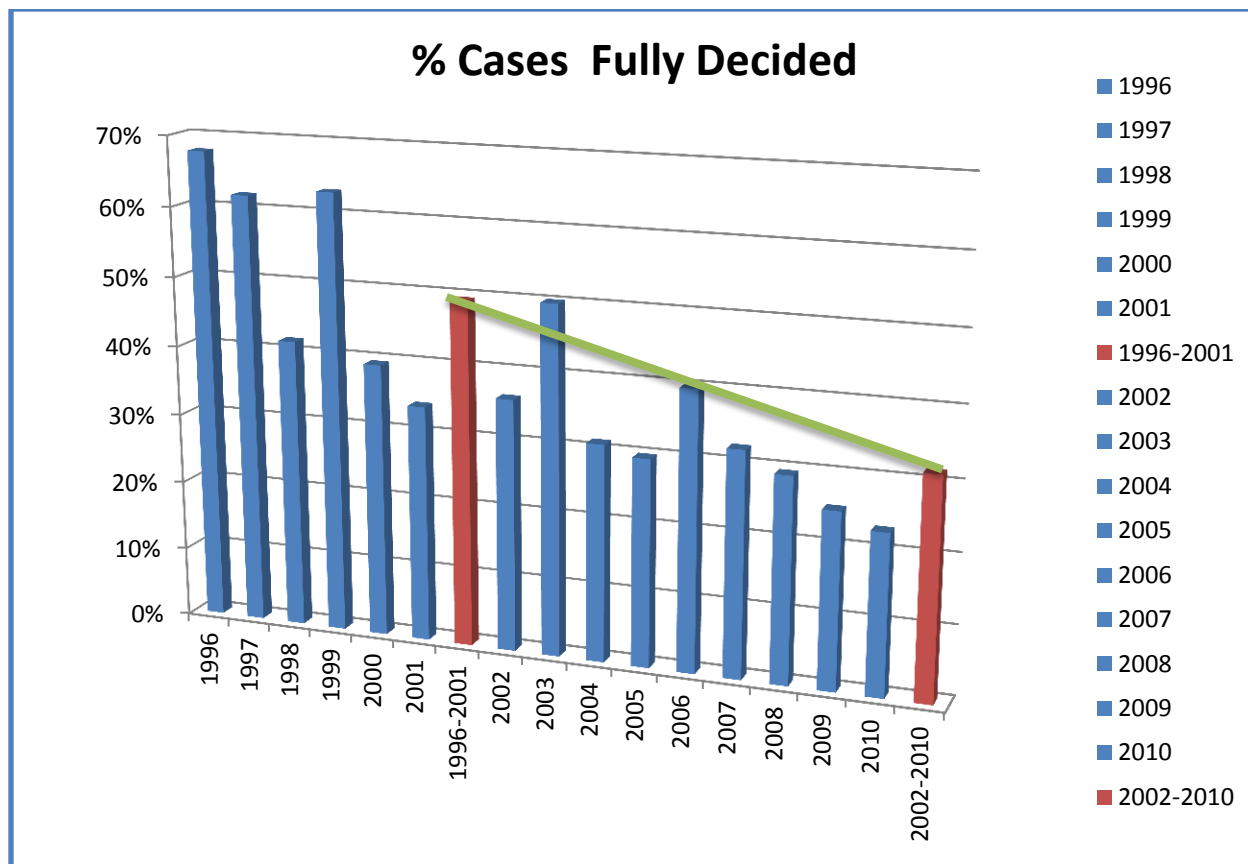
<sup>133</sup> *See id.*

settlements and making them available any time during the processing of a petition or a case.<sup>134</sup> In fact, the assumption was that admissibility decisions would move the States to increase the number of friendly settlements.

As previously noted, the two-stage procedure shifted the concentration of the Commission decisions from joint admissibility and merits decisions to admissibility decisions. In 1996 - 2001, 54% of the Commission's decisions were admissibility decisions and 46% were final decisions on the merits (including friendly settlement, merits decisions, and cases filed with the Court). From 2002 - 2010 this percentage shifted to only 17% of the decisions as final decisions on the merits or friendly settlement, while 83% were admissibility or archival decisions. It is possible to view this data in multiple ways. Upon adding the cases submitted to the Court, the distribution changes, but still weighs heavily on the beginning stages. Counting the cases submitted to the Court, 32% were fully decided while 68% of decisions were admissibility or archival. The Clinic asserts that archival decisions are similar to preliminary stage inadmissibility decisions. However, even if the archival decisions are included as final decisions, those decisions do not affect the growing number of cases added to the merits stage by admissibility decisions. The cases opened after an admissibility determination can only be addressed by archival, merits, friendly settlement, or submission to the Court.

Commissions Decisions by Year						
Year	Friendly Settlement	Mer its	Total Commission Decisions	% Fully Decided by Commission	Submissions to Court	% of Fully Decided Total
1996	1	16	31	55%	4	68%
1997	1	23	42	57%	2	62%
1998	2	25	72	38%	3	42%
1999	4	30	65	52%	7	63%
2000	13	10	66	35%	3	39%
2001	8	4	50	24%	5	34%
<b>1996-2001</b>	<b>29</b>	<b>108</b>	<b>326</b>	<b>42%</b>	<b>24</b>	<b>49%</b>
2002	3	11	58	24%	7	36%
2003	11	6	64	27%	15	50%
2004	3	4	61	11%	12	31%
2005	8	7	84	18%	10	30%
2006	10	8	80	23%	14	40%
2007	6	5	75	14%	14	32%
2008	5	8	72	17%	9	29%
2009	4	13	114	16%	11	25%
2010	11	4	133	12%	16	23%
<b>2002-2010</b>	<b>53</b>	<b>65</b>	<b>741</b>	<b>17%</b>	<b>108</b>	<b>32%</b>

<sup>134</sup> Press Release 18/00, *supra* note 127, ¶13.



### 3. Transferring Cases to the Court

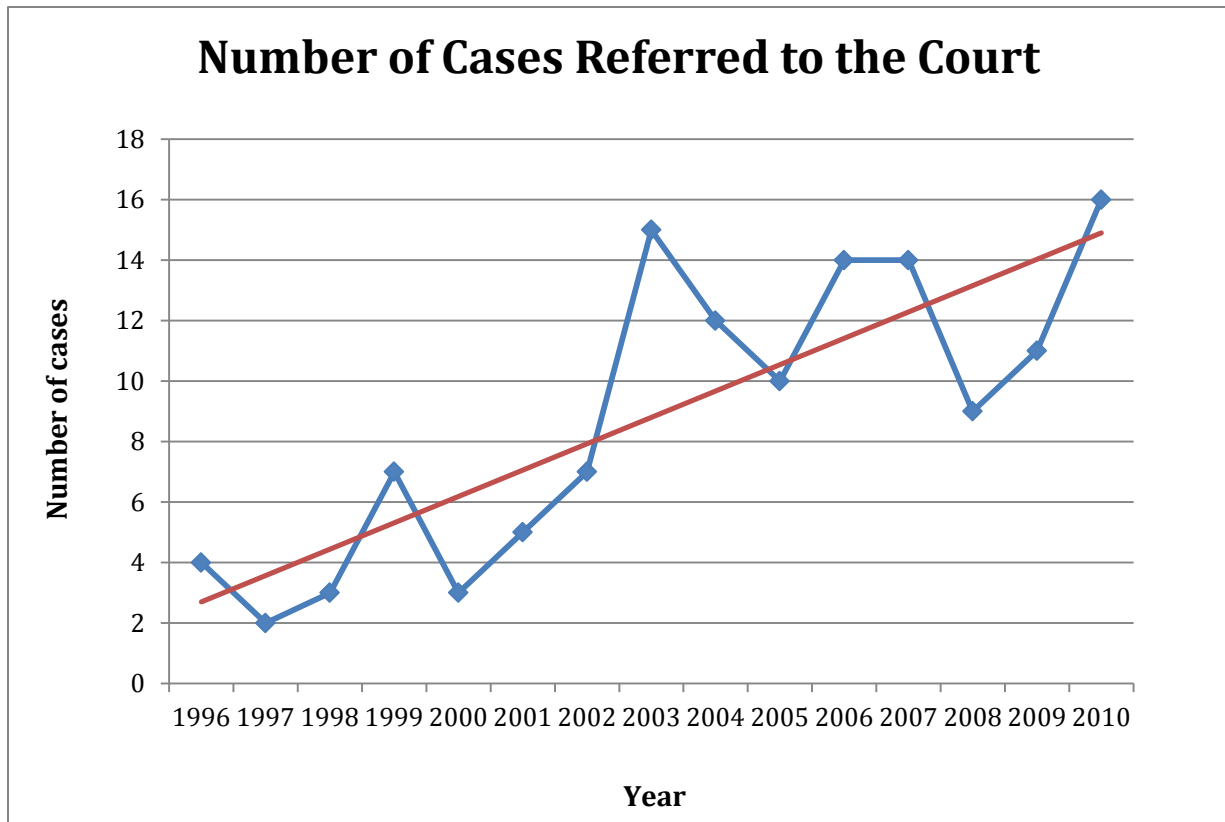
The 2000 changes also amended the procedure for transferring a case to the Court. The new rules contained a presumption of automatic referral unless the Commission adopted a majority and reasoned decision saying otherwise.<sup>135</sup> Before this change, there was a presumption of adopting a final report with recommendations. The Rules also included a clear guideline on the criteria that the Commission should consider in evaluating whether to refer a case to the Court. As a result, the percentage of cases submitted to the Court grew significantly.<sup>136</sup> From 1997 - 2001, there were only twenty cases decided by the Court.<sup>137</sup> Comparatively, in the five years that followed the adoption of the new Rules, the Court decided fifty-eight cases.<sup>138</sup> This change of course created additional work for the Commission, as it had to continue its involvement in multiple cases now litigated in front of the Court.

<sup>135</sup> *Id.* ¶16.

<sup>136</sup> Cavallaro & Brewer, *supra* note 87, at 781.

<sup>137</sup> Human Rights Clinic case database.

<sup>138</sup> *Id.*



#### 4. Follow-up Procedures

The 2000 changes included for the first time a follow-up mechanism to monitor the implementation of the recommendations of the Commission included in its merits or friendly settlement reports.<sup>139</sup> The Clinic commends this provision to promote full compliance with the decisions of the Commission but it encourages making it mandatory in the Rules. In any event, the consistent practice of the IACHR is to follow-up all cases with published reports on merits and friendly settlements and to include this information in its Annual Report.

#### 5. Victim Participation in the Court

As the Commission implemented these reforms, the Court also changed its Rules of Procedure to allow for increased individual victim participation. Before 2000, victims were only allowed to appear independently in the reparations phase during Court proceedings.<sup>140</sup> Now, once the case is submitted to the Court, the victim gains access to relevant documents and has the ability to independently appear before the Court in all the different stages.<sup>141</sup>

<sup>139</sup> 2002 Commission Rules of Procedure, *supra* note 102, art. 46.

<sup>140</sup> Inter-Am. Ct. H.R., Rules of Procedure of the Inter-American Court of Human Rights, (Sept. 9–20, 1996), [http://www.corteidh.or.cr/reglamento\\_eng.cfm](http://www.corteidh.or.cr/reglamento_eng.cfm) [hereinafter 1996 Court Rules of Procedure].

<sup>141</sup> Press Release 18/00, *supra* note 127, ¶17.

## **B. 2009 Rules of Procedure Reforms**

In 2009, the Commission adopted a second set of revisions to the Rules of Procedure.<sup>142</sup> The Commission's stated goals in instituting these revisions were to enhance "participation by victims, guarantees to harmonize procedural participation of the parties and enhance the publicity and transparency of the system, as well as the adoption of other necessary adjustments after the 2000 reform."<sup>143</sup> Accordingly, the changes addressed four areas: "the mechanism of precautionary measures, the processing of petitions and cases, the referral of cases to the jurisdiction of the Inter-American Court, and the holding of hearings on the situation of human rights in the Member States."<sup>144</sup> Again, as in 2000, no explicit references were made to goals of reducing the backlog or improving the timely resolution of petitions and cases.

### **1. Precautionary Measures and Urgent Situations**

The changes to the precautionary measures in 2009 clarified that they could be requested both in connection with a petition or independent of a petition.<sup>145</sup> The new rules listed criteria for evaluating the gravity of a situation.<sup>146</sup> The Commission also added a provision for periodically reviewing whether precautionary measures are needed.<sup>147</sup>

### **2. Processing Petitions and Cases**

The reforms granted petitioners and States more time to submit additional observations on the merits.<sup>148</sup> While the additional time may be needed, it is more often than not used as a delay mechanism by States to not provide additional observations on the merits, and not continue the adjudication of the case. This increased time is antithetical to the goal of reducing the length of the Commission's procedure, unless this extension is aimed at ensuring timely substantive observations.

Other provisions included a limitation on when challenges to admissibility could be submitted,<sup>149</sup> a provision allowing the receipt of testimony during on-site visits,<sup>150</sup> and clear provisions for archiving cases.<sup>151</sup> The limitation on challenges to admissibility is consistent with increasing the pace of the Commission's decisions. The receipt of testimony during on-site visits is likely to increase the effectiveness of the Commission. Finally, archiving petitions could

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<sup>142</sup> For a flowchart of the current Commission procedures, see Appendix II.

<sup>143</sup> Press Release, Inter-Am Comm'n H.R., IACHR Publishes New Rules of Procedure No. 84/09 (Dec. 10, 2009), available at <http://www.cidh.oas.org/Comunicados/English/2009/84-09eng.htm>.

<sup>144</sup> *Id.*

<sup>145</sup> Commission Rules of Procedure, *supra* note 6, arts. 25.1–25.2.

<sup>146</sup> *Id.* art. 25.4.

<sup>147</sup> *Id.* art. 25.6.

<sup>148</sup> *Id.* arts. 37.1–37.2.

<sup>149</sup> *Id.* art. 30.

<sup>150</sup> *Id.* art. 39.

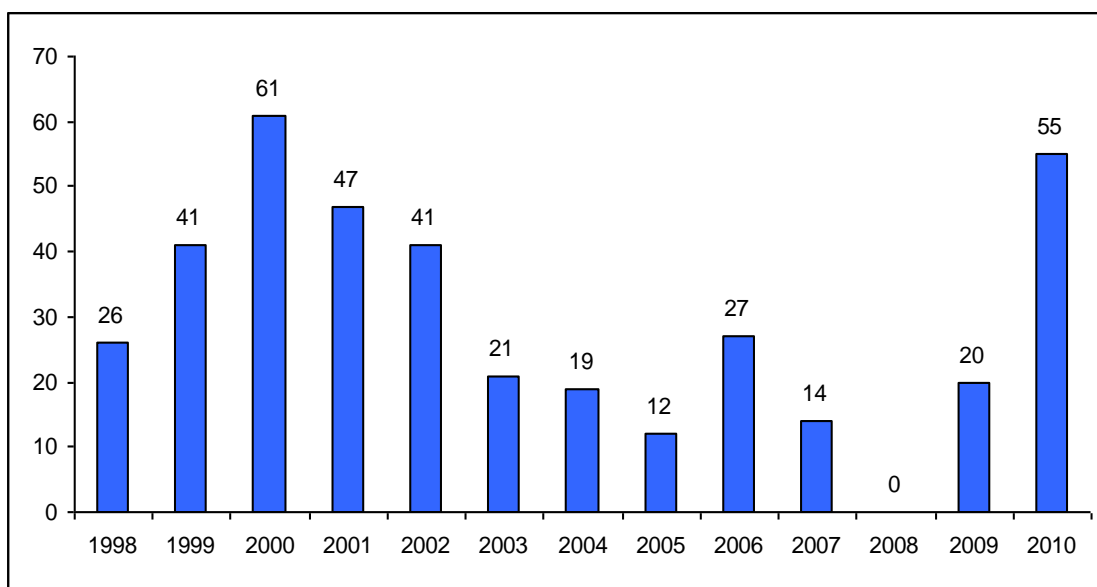
<sup>151</sup> *Id.* art. 42.

reduce the backlog of the Commission because it eliminates cases in the docket that petitioners are no longer pursuing.<sup>152</sup>

### 3. Archival Decisions

When the Clinic created the database there was no publically published information on the statistics of archival decisions. However, for the past two years the Commission has begun to publish this information and policy review of petitions and cases that can be archived. The Clinic acknowledges that the absence of the archival decisions may change some of our findings. The Clinic commends the Commission's recent decision to publish archival information which is important for the transparency of the Commission and to minimize its backlog. The Clinic urges the Commission to continue to do so.

The graph below was created by the Commission to show performance in relation to archived cases. The graph shows an inconsistent trend in the number of archival decisions. The high number of archival decisions in 2010 could be a positive reversal from the absence of such decisions in 2008.



### 4. Requirements for Referring Cases to the Court

To regulate its previous practice, per the 2009 changes, the Commission may suspend the time limit to refer a case to the Court if the State in question is willing to implement the Commission's recommendations and the State consents to the suspension.<sup>153</sup> This provision could represent a tension between the efficiency of the system and its effectiveness. The provision could decrease efficiency by leaving some cases in limbo while the Commission waits

<sup>152</sup> The Clinic notes that archival decisions may temporarily increase the statistical length of procedure by dealing with cases filed much earlier and forgotten and by reallocating resources to that project.

<sup>153</sup> Commission Rules of Procedure, *supra* note 6, art. 46.

to see if the State implements the recommendations. At the same time, it may increase compliance with the Commission's decisions, since it offers the States a reprieve from submission to the Court if the State indicates its will to comply with the Commission's recommendations.

An important reform of the Inter-American Court of Human Rights reduced the role of the Commission and increased the participation of alleged victims. Under Article 25 once notice of the brief submitting a case before the Court has been served, the alleged victims or their representatives may 'submit their brief containing pleadings, motions, and evidence autonomously and shall continue to act autonomously throughout the proceedings'.<sup>154</sup> Further, the changes have now enabled the Commission to refer cases to the Court by only transmitting the Article 50 report with an accompanying letter stating the reasons for the referral. This should reduce the workload of the Commission when referring to the Court, thus increasing its efficiency. The Clinic greatly commends this change to the Rules and requests that the Commission implement this change across the board.

## **5. Rapporteurships and Working Groups**

In addition, the 2009 reforms continue to elaborate on the functions of Rapporteurships and Working Groups in Article 15. The new rule specifies that Commissioners may be designated country rapporteurs, thematic rapporteurs, or special rapporteurs, and that all three should work in coordination with each other, and work in accordance with the Rules and their mandates.<sup>155</sup> Furthermore, the country rapporteurs are responsible for carrying out the follow-up functions assigned by the Commission.<sup>156</sup> Importantly, according to Articles 15 and 35, a Working Group on Admissibility shall be established to "study, between sessions, the admissibility of petitions and make recommendations to the plenary."<sup>157</sup>

### **C. Conclusion on Procedural Reforms**

In sum, the 2000 and 2009 procedural reforms significantly altered the way the Commission handles individual petitions and cases.<sup>158</sup> Several of these changes have had positive effects on the Commission's adjudicatory process. Regrettably, however, the reforms did not have the explicit goals of reducing the backlog and increasing adjudication speed. Although many of the changes seemed to be designed with these goals in mind, the most expansive reforms, particularly; splitting the admissibility and merits decisions, making the friendly settlement stage mandatory, and the automatic referral of cases to the Court have not

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<sup>154</sup> Rules of Procedure of the Inter-American Court of Human Rights, Title II Ch. 1 Art 25, available at [http://www.corteidh.or.cr/reglamento\\_eng.cfm](http://www.corteidh.or.cr/reglamento_eng.cfm).

<sup>155</sup> Commission Rules of Procedure, *supra* note 6, art. 15.

<sup>156</sup> *Id.*

<sup>157</sup> *Id.* art. 35. The Working Group on Admissibility was already established in the previous Rules.

<sup>158</sup> The Clinic also notes that the Court also amended its Rules in 2009 reducing the role of the Commission in the litigation of cases and allowing for the presentation of the Article 50 Report and a letter rather than a full-fledged application. Those changes could liberate resources from the Commission that can be reallocated to other areas of the case system.



been effective in reducing the case backlog. In fact, since 2001, the average length of time between the filing of the petition and a published Commission decision has actually increased.<sup>159</sup>

#### **D. Administration and Human Resources**

Since 2001 the Executive Secretariat has undergone two positive phases of organizational reforms with the goals of maximizing its output and better utilizing its limited resources.<sup>160</sup> For the first phase of reorganization, “standardization and coherence” within the legal work of the Commission were its main priorities.<sup>161</sup> In order to achieve these goals, the Executive Secretariat created advisory groups that assisted with reviewing initial petitions and assessing requests for precautionary measures<sup>162</sup> to ensure that the standards were consistent across States.

In 2004, pursuant to the goals of the first phase of reorganization, the Executive Secretariat created the litigation or court group, a specialized group responsible for supporting litigation before the Court.<sup>163</sup> This group prepares the submission of cases to the Court, handles jurisdictional procedures before the Court, follows cases throughout their Court proceedings, and tracks judgments and provisional measures.

During this reorganization phase, the Commission implemented other practices related to the management of human resources. According to former staffers of the Executive Secretariat, the Commission expanded the number of annual fellows and interns and assigned them to the desk officers depending on the number of pending petitions and cases. The Commission stated on average the IACHR would have between 10-12 interns and 2-3 fellows during a given cycle.<sup>164</sup> However, most of the reforms adopted within the Executive Secretariat in this first phase were intended to improve coherence to the work of the Commission and particularly to respond to the new Rules adopted in 2000 rather than to speed up the process or deal with the backlog.

The second phase of reorganization specifically targeted the efficiency of the individual case system.<sup>165</sup> In 2007, the Executive Secretariat consolidated the country desks, which handled outreach, observations, and on-site visits for their respective States and the processing of individual petitions, including drafting admissibility, merits, and friendly settlement reports.<sup>166</sup> By consolidating the country desks, the Secretariat created regional groups to handle the individual cases, observations, and on-site visits for more than one State. This allowed for the even distribution of cases across regions and the ability to track and compare each group’s performance. This setup also enabled attorneys within each regional group to specialize based on

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<sup>159</sup> For a table detailing the increase in average amount of time, see *supra*, Section II(B)(1)(b).

<sup>160</sup> Committee on Juridical and Political Affairs, Permanent Council of the Organization of American States, *Reorganization of the Executive Secretariat of the Inter-American Commission on Human Rights (IACHR)*, CP/CAJP-2693/09 rev. 1 (Feb. 20, 2009) [hereinafter *Reorganization of the Executive Secretariat*]

<sup>161</sup> *Id.*

<sup>162</sup> *Id.*

<sup>163</sup> *Id.*

<sup>164</sup> Commission’s Answers, *supra* note 9, at 21.

<sup>165</sup> *Id.*

<sup>166</sup> *Id.*

their seniority.<sup>167</sup> For example, a junior professional could be responsible for the admissibility report, while a senior professional would draft the merits report, and a principal specialist would coordinate and oversee the regional group.<sup>168</sup> The idea was to assign an equal number of petitions and cases and a similar number of professionals to each group, but currently, not all of the regional groups have a principal specialist or coordinator.<sup>169</sup>

The Commission has also stated that ‘interns and fellows are assigned in accordance with the *needs* of the Commission, taking into account such factors as language competence, geographical balance and prior experience.’ Furthermore fellows are sometimes assigned to thematic priorities and specific initiatives ‘such as the need to eliminate procedural delay’.<sup>170</sup> Finally, the Executive Secretariat created a protection group to deal with precautionary measures. The protection group studies requests for precautionary measures and analyzes their necessity before making the pertinent recommendations to the Commission. Additionally, it handles the processing of those precautionary measures and follows up with the petitioner and the State after the measures have been requested to make sure they are sufficient.

The second phase of reorganization included the Commission’s creation of the Registry in March 2007, a subset of the Executive Secretariat, in order to address the large backlog of new petitions. Originally, the Registry’s mandate was narrow. It was a special project designed specifically to address the backlog of new petitions already filed with the Commission. However, this mandate has since been expanded, and the Registry now reviews all new petitions in addition to reviewing backlogged new petitions in chronological order. To create the Registry, the Commission hired new staff and reallocated personnel from other stages of the case system process. The Commission’s plan was to reduce the delay in the initial stage by concentrating resources in the Registry for the first three years and then once a more reasonable delay was achieved, the resources would be allocated elsewhere.<sup>171</sup> Currently, all of the fellows—temporary legal staff that have less experience and specialization (mostly recent law graduates)—are concentrated in the Registry to support the reception and initial appraisal of petitions.<sup>172</sup> Significantly, this has enabled the Registry to review two years’ worth of backlogged initial petitions every year. From March 2007 to August 2011 the average length in the stage of initial evaluation has been reduced from 52.3 months to 25 months. According to the Commission, this has therefore been more than halved, an achievement the Clinic greatly commends.<sup>173</sup> This is consistent with its goal that there will be a standard wait time of three months for all new petitions by 2016.<sup>174</sup>

The Executive Secretariat has steadily increased its capacity to produce more reports. The Clinic congratulates the Secretariat for this achievement. Nevertheless, even with all the efforts of the professional and administrative staff of the Secretariat, the perspectives are concerning.

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<sup>167</sup> Reorganization of the Executive Secretariat, *supra* note 161, at 2–3.

<sup>168</sup> *Id.*

<sup>169</sup> *Id.*

<sup>170</sup> Commission’s Answers, *supra* 9, p. 21.

<sup>171</sup> *Id.* at 5.

<sup>172</sup> As it was mentioned, in the past, fellows were allocated to support desk officers in drafting reports and processing petitions and cases.

<sup>173</sup> Commission’s Answers, *supra* note 9, at 9.

<sup>174</sup> *Id.* at 5.

With regards to the admissibility stage the Commission conducted the highest number of admissibility reports, 83, in 2010. As of August 30, 2011, there were 1,137 matters awaiting an admissibility decision.<sup>175</sup> This would mean, assuming the Commission continued at its increased 2010 pace, it would take nearly 16 years to fully decide all the admissibility petitions. This is excluding the number of new petitions that are submitted each year.

For the merits decisions, only 25 matters were decided in 2010, but as of August 30, 2011, 515 matters await decision on the merits.<sup>176</sup> At this pace it would take at around 20 years to clear this backlog without addressing any new cases.

It is these startling figures that emphasize the need for the OAS to immediately increase the funding of the IACHR and for the Commission to adopt the Clinic's recommendation wherever possible, which rely on re-structuring and re-organization, as a complement to the increased funding.

With the exception of the recent publication of the Strategic Plan, there are very few public documents outlining the measures taken to deal with the backlog and time delay in currently processed petitions and cases, however, it appears that many efforts were concentrated on the backlog of initial petitions. As many personnel have been transferred to the Registry, fewer personnel are available to deal with the other steps in the adjudication process. The Commission states that the reason to concentrate initially in the first stage of the process is "based on the principle that a State cannot resolve a violation unless it has the knowledge of the complaint presented before the Inter-American System."<sup>177</sup> However, the Clinic stresses the importance of priority throughout the different stages. The exhaustion of domestic remedies will have brought the issue to the State's attention, so it is not true that the State has no knowledge of the situation or that it had not had the opportunity to solve it. Furthermore, the Clinic recommends that the resources should be evenly distributed and therefore standardized to ensure prompt decisions throughout the entire process. Thus, it seems likely that as the backlog of petitions for initial review decreases, the backlog of petitions and cases in process will likely increase over the next couple of years.

## **E. Technology**

In addition to these positive administrative changes, the Commission has implemented a variety of changes to take advantage of new technologies. Consistent with its priority in the first reorganization phase of better coherence, the Commission implemented the Petition and Case Management System (PCMS) in 2002. PCMS is an electronic database that tracks the progress of petitions and cases, making an electronic record for every procedural step beginning with the submission of the petition. PCMS also standardize s all the Commission's communications with the parties in a given petition by producing pre-determined letters for each step that an individual complaint follows, increasing the efficiency and consistency of the Executive Secretariat.

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<sup>175</sup> *Id.* at 16.

<sup>176</sup> *Id.*

<sup>177</sup> *Id.* at 5.

In May 2010, the Executive Secretariat began using an electronic Document Management System (DMS) in order to track and file documents in the same way that it manages petitions and cases. In this database, each new document filed by a party or generated by the Commission digitalized (if it is not already in an electronic format) is registered and linked to a petition or case, creating a virtual file for all new petitions. After that, the document is sent electronically to the lawyer dealing with that particular petition or case. The new DMS achieves several goals. First, the DMS creates a full electronic file of each petition and case and facilitates access to the documents within each file. Second, it eliminates paper use by fully digitalizing the case system. Third, the DMS facilitates oversight and monitoring by giving managers electronic access to the stages of petitions and cases and to the pertinent documents. As mentioned *supra* Section II(B)(3) there are some areas in which the system does not meet its potential, particularly because the system only digitized new petitions and documents with the Commission stating that it has no plans to digitalize matters that entered the Commission before June 2010.<sup>178</sup>

In conjunction with the PCMS and DMS, the Executive Secretariat next hopes to implement a ‘User Portal’ (PPP) through which States and petitioners will be able to view the documents relating to their petition or case and monitor its progress within the system. According to one member of the Registry, this portal will first give petitioners access to the main procedural documents relating to their petition or case. Eventually, all petitioners and States will have access to the information in the database that relates to their petition or case. Furthermore PPP will offer the possibility of digitally notifying petitioners and States of IACHR decisions.

In general, electronic databases to track petitions and cases are instrumental in the conservation of documents, reducing the margin of error, and increasing access to case progress and documents. These functions increase the efficiency of the Commission by streamlining the process of tracking cases and documents and maintaining the organization of completed tasks. They also increase effectiveness by improving public access and transparency.<sup>179</sup>

The Commission has also started a process whereby people can submit petitions online.<sup>180</sup> After registering with the Commission’s website, petitioners can complete a petition by filling out the online form. Upon submitting this form, petitioners immediately receive an automated follow-up email that simultaneously confirms the receipt of the electronic petition and requests the petitioner to mail a signed copy of the form. There were no public records of the number of new petitions submitted only via email, however, the Commission’s answers have provided its calculation. As of August 30, 2011, of a total of 1,030 petitions received, 308 have been received through the online formula (33%). The Commission estimates through a sampling of 100 consecutive petitions from which online petitions were withdrawn, that 37 were presented by e-mail. Using the Commission’s own formula, they estimate this to be 37% of petitions being received through e-mail translating to, ‘roughly 55%’ of petitions received during the year being through electronic means.<sup>181</sup> The Clinic commends the use of the online formula by the

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<sup>178</sup> *Id.* at 22.

<sup>179</sup> *Infra* Section IV(A), the transparency of the human rights body to individuals and NGOs increases the effectiveness of the system.

<sup>180</sup> “Petition Form,” Inter-American Commission on Human Rights, *available at* [https://www.cidh.oas.org/cidh\\_apps/instructions.asp?gc\\_language=E](https://www.cidh.oas.org/cidh_apps/instructions.asp?gc_language=E).

<sup>181</sup> Commission’s Answers, *supra* note 9, at 15.

Commission and stresses the importance of the efficiency of electronic communication. It is, however, unfortunate that the Commission can only provide such rough estimates regarding its own intake of electronic communications. The Clinic believes that the lack of electronic submissions may be in part to the limited visibility of the online form. Currently, there is a campaign to increase the use of the online system and online submissions. Specifically, the Commission hopes to enable petitioners to remotely check the status of petitions and cases and make requests for precautionary measures via the online system.<sup>182</sup> Furthermore, the Commission plans to generate automatic, digital notifications confirming the receipt or transmittal of documents.<sup>183</sup>

Petitioners sometimes use email to submit other documents to the Commission, such as additional observations or evidence relating to their petition or case. When this happens, petitioners receive a follow-up email from the Commission within a few days stating that the information has been received. Unfortunately, unlike the response to petition submissions, the follow-up email for the submission of subsequent documents is not immediate or automatically generated.

#### **F. Strategic plan for the years 2011–2015**

In addition to past reforms and the myriad of organizational changes, the Commission has recently published for the first time a strategic plan including goals through the year 2015.<sup>184</sup> The plan establishes concrete goals and specific targets for each of its various functions. The Clinic believes this publication is a positive step for the Commission. In particular, the Clinic notes that publishing numeric targets is an important part of performance measurement and management, which can increase efficiency. Further, the establishment of concrete goals shows that reducing the backlog and length of adjudication are priorities for the Commission. The Clinic first explains some measures described in the recent plan that it believes will improve the efficiency and effectiveness of the Commission; disclosure of funding statistics, the creation of the Friendly Settlement Group, and the commitment to follow-up measures. Next, the Clinic addresses some limitations of the strategic plan.

First, the Clinic commends the Commission for disclosing the budget of the Strategic Plan.<sup>185</sup> According to the Commission's estimates, in order to achieve the goals in the plan, the budget must increase over two and a half times between now and 2015.<sup>186</sup> Accordingly, "[t]he Executive Secretariat's plan is to ensure the technical expertise necessary to obtain the necessary funds for the Commission to operate properly and for the proper management of those funds."<sup>187</sup>

Second, as reflected in the Strategic Plan, the Commission has recently created the Friendly Settlement Group, a specialized unit that will support Commissioners assigned to cases

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<sup>182</sup> Strategic Plan Part II, *supra* note 111, at 29.

<sup>183</sup> *Id.*

<sup>184</sup> Strategic Plan Part I, *supra* note 58; Strategic Plan Part II, *supra* note 111.

<sup>185</sup> Strategic Plan Part I, *supra* note 58, at 57–59.

<sup>186</sup> Inter-Am. Comm'n H.R., *Strategic Plan 2011–2015, Budget of the Strategic Plan* (January 2011). [hereinafter *Budget of the Strategic Plan*]

<sup>187</sup> Strategic Plan Part II, *supra* note 111, at 28.

in which the parties have agreed to enter the friendly settlement procedure.<sup>188</sup> The Group will be in charge of tracking and facilitating the process, preparing the necessary reports, and providing general assistance to the Commissioners dealing with these petitions and cases.<sup>189</sup> Along with this Group, the Commission created targets for how many reports the Friendly Settlement Group will publish each year that support the friendly settlement process.<sup>190</sup> Unfortunately, the Commission was only able to supply ‘rough estimates’ of 70-100 regarding the number of cases and petitions currently in friendly settlement negotiations.<sup>191</sup> This raises concerns for planning and for being able to know the status of each case and petition and it is particularly problematic for the Commission when forecasting both staff and resources.

The Clinic praises the Commission and expects several benefits to result from this focus on friendly settlements are beneficial in terms of both efficiency and effectiveness. Friendly settlements increase efficiency by dealing with cases (or petitions) at the initial stages rather than going through all of the Commission’s procedures. Additionally, friendly settlements can increase effectiveness because States are more likely to comply with agreements that they have consented to. In a study of compliance with decisions in the Inter-American System, 54% of friendly settlements had total compliance by States, while only 29% of Court decisions and 11% of Commission reports were fully complied with.<sup>192</sup> Additionally, like any method of alternative dispute resolution, friendly settlements can be more flexible than Commission and Court decisions. Rather than being bound by legal rules, petitioners and States have more freedom to agree on terms that they choose. Finally, the Clinic’s data indicates that settled petitions and cases reached resolution sooner than the cases reaching a merits decision. The average time between filing and settlement approval was almost five months shorter than the average time between filing and merits decisions published by the Commission and almost two years shorter than the average time between filing and a decision from the Court.

The Commission has set up very ambitious goals for the processing of individual petitions. Over the period covered by the strategic plan the Commission will have to complete the initial review of an estimated 9750 petitions received from 2011 to the end of 2015, which will involve an estimated 16,250 legal evaluations during that same period. The Commission’s plan is that by December 31, 2013, no petition presented prior to December 31, 2010 should be under review. The Strategic Plan aims to eliminate the backlog in the admissibility and merits phases in two stages:

- ◆ changes in methods that serve to improve the output of reports and increase it in 2011 and 2012; and
- ◆ heavy emphasis on the backlog-elimination program in the period from 2013 to late 2015. During this period, the Sections would have to quadruple their production capacity for the production of admissibility reports and in the merits phase the Sections

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<sup>188</sup> *Id.* at 10.

<sup>189</sup> *Id.*

<sup>190</sup> *Id.*

<sup>191</sup> Commission’s Answers, *supra* note 9, at 16.

<sup>192</sup> Fernando Basch et al., *The Effectiveness of the Inter-American System of Human Rights Protection: a Quantitative Approach to its Functioning and Compliance with its Decisions*. v.7 n.12 SUR INT’L J. ON HUM. RTS. 9, 20 (2010).

would have to increase their production capacity six fold

In order to achieve these goals, the productivity targets for the admissibility, merits and friendly settlement reports should be as follows:

	2011	2012	2013	2014	2015
<b>Admissibility reports</b>	220	220	440	880	704
<b>Merits reports</b>	55	165	330	330	330
<b>Friendly settlement reports or reports documenting case closings.</b>	22	55	176	176	176

Finally, the Clinic commends the Commission’s concrete goals regarding follow-up measures.<sup>193</sup> The Strategic Plan includes a commitment to maintain the capacity to monitor compliance in 414 cases per year until 2014 and increase its capacity to monitor compliance in 477 cases thereafter.<sup>194</sup> The Commission also aims to conduct twenty working meetings annually that will focus on following-up on State compliance with Commission recommendations.<sup>195</sup> Overall, the Commission predicts that its increased capacity to follow-up on recommendations will involve roughly 1,000 digital and physical correspondence items every year.<sup>196</sup>

The Clinic commends the ambition and clarity of the Commission’s new goals as well as the specific goals of reducing the backlog and wait time. The Strategic Plan indicates that the Commission is moving in the right direction and that it is committed to seeking the additional funding necessary to effectuate these goals. However, in analyzing the likelihood of actually reaching these goals, the Clinic recognizes several ways in which the Strategic Plan falls short. The Strategic Plan relies heavily on increased funding but does not include alternative plans if the funds do not materialize. In this study, the Clinic highlights some alternatives not linked to additional funds that the Commission should seriously consider.

The Strategic Plan fails to recognize that some substantial *structural changes* are necessary to increasing efficiency. Without significantly changing how petitions and cases are adjudicated and without an unlikely impressive influx of additional funds, there is little reason to believe that the 2015 goals will be obtained. Especially given that the draft program-budget of the OAS, presented by the Secretary General, proposed a reduced budget allocation of \$4,547,400 for the IACHR in 2012. This is in contrast to \$4,646,700 in 2011, a 2.2% budget cut.<sup>197</sup> Furthermore, over 50% of the IACHR’s activities depend on voluntary contributions from

<sup>193</sup> Strategic Plan Part II, *supra* note 111, at 11.

<sup>194</sup> *Id.*

<sup>195</sup> *Id.*

<sup>196</sup> Strategic Plan Part II, *supra* note 111, at 11.

<sup>197</sup> Reply of The Executive Secretariat of the IACHR to the Note from the Chair of the Working Group, published as document CAAP/GT/PPP-33/11 (20 September 2011) at 3.

Member States and other countries to complete essential parts of its mandate.<sup>198</sup> In the current global economic climate, the financial proposals of the Commission are vulnerable to being unachievable, as the OAS reduction trend indicates. In addition, the goals do not mention the implementation of structural changes like increased joining of similar cases that have the potential to impact the backlog and long wait time that are not reliant on increased funding. Furthermore, nowhere in the goals is there any mention of joining the admissibility and merits phases or eliminating the admissibility phase altogether, actions that would certainly and significantly reduce the length of adjudication.

Second, the Commission sets ambitious goals in terms of the number of cases it will hear, but it fails to match these goals with the sweeping *procedural changes* they necessitate. According to the Strategic Goals, in order to eliminate the backlog in the admissibility phase, the Commission plans on quadrupling its production capacity from 2013 to 2015.<sup>199</sup> In order to eliminate the backlog in the merits phase, the Commission plans on increasing its production capacity six fold in that same timeframe.<sup>200</sup> The feasibility of these objectives is entirely dependent on securing additional funds but do not take into considerations elements such as the present budget constraints, capacity limitations of the staff, and overall lack of time of both Commissioners and staffers. A more strategic approach would be to implement structural and procedural changes that would increase the speed of case adjudication without necessitating an unprecedented increase in resources and capacity. The Commission recognizes that its main strategy is receiving additional funding by stating that, “if the projected resources do not materialize or if only a portion of them materialize, the projection under this plan will have to be revisited.”<sup>201</sup>

The Clinic also commends the Commission for its plans to increase transparency and public disclosure by cultivating an open and informative relationship with the media and journalists,<sup>202</sup> developing specific press campaigns,<sup>203</sup> and increasing the use of electronic media.<sup>204</sup> However, in its strategic plan, the Commission does not provide any details or activities on increasing accessibility in terms of data or procedural criteria applied by the Commission.

In conclusion, the Clinic is encouraged by the ambitious and clear goals contained in the Strategic Plan. But it remains concerned that the success of those goals is largely dependent upon increased funding. The goals do not appear to contemplate an alternative plan if funding does not increase. The IACHR also does not explain how changes that do not require additional funding or a more efficient use of currently available funds are being implemented or are going to be adopted in the near future.

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<sup>198</sup> Strategic Plan Part II, *supra* note 111, at 5.

<sup>199</sup> *Id.* at 7.

<sup>200</sup> *Id.* at 9.

<sup>201</sup> *Id.* at 7. This statement appears under both the admissibility plan of action and the merits plan of action.

<sup>202</sup> *Id.* at 25–26.

<sup>203</sup> *Id.* at 26.

<sup>204</sup> *Id.* at 27.



#### IV. Framework of Effectiveness and Efficiency for a Human Rights Body

The recommendations of the Clinic rely heavily on the principles of effectiveness and efficiency, both of which are essential for a human rights body like the IACHR. The Clinic understands that the Commission needs to find a proper balance between effectiveness and efficiency. In other words, the Commission's effectiveness could be hampered if it does not process enough complaints in a reasonable time. Similarly, a more efficient adjudication process cannot be achieved at the expense of the Commission's overall effectiveness. Therefore, the Clinic will describe various understandings and measures of being an effective human rights body and what it means to have an efficient process. Then, using those understandings of effectiveness and efficiency, the Clinic will discuss the challenges that the Commission faces when trying to reach those objectives to maximize the success of any proposed or adopted recommendations.

##### A. Effectiveness

To understand effectiveness within the Commission, one must consider the main goals of the system. As the creation of the Commission was premised upon the promotion and protection of human rights,<sup>205</sup> it is only effective if its conduct reflects and seeks to achieve this larger aim. This report does not intend to decide the challenging question of what it means to be an effective human rights body, particularly in its adjudicative role, nor how to measure it. Instead, the Clinic wants to emphasize that the Commission, as a body with a quasi-judicial function and other promotional, diplomatic, and political functions, tends to fulfill several different goals that at some times could contradict each other.

In order to assess the effectiveness of the Commission and the way in which it handles individual complaints, the Clinic briefly references some general goals that the Inter-American System seeks to meet by establishing an individual complaint mechanism in the case system. Effective adjudication could be defined in terms of a court's basic ability to compel or cajole compliance with its judgments.<sup>206</sup> In order to be effective, supranational tribunals must ensure compliance by convincing domestic governments to act in accord with its rulings.<sup>207</sup> Thus, any solution to delay and backlog should consider the impact that those measures would have on the ability of the Commission to compel compliance with its decisions in individual cases.

Nevertheless, effectiveness cannot be measured only in terms of State compliance with the decisions of the pertinent human rights body. The Clinic identifies among the basic goals served by the Commission's adjudicatory process: i) the protection of individuals,<sup>208</sup> ii) raising

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<sup>205</sup> American Convention, *supra* note 5, art. 41.

<sup>206</sup> Anne-Marie Slaughter and Laurence Helfer, *Toward a Theory of Effective Supranational Adjudication*, 107 *YALE L.J.* 273 (1997) at 110.

<sup>207</sup> *Id.*

<sup>208</sup> In its preamble, the American Declaration establishes that the "international protection of the rights of man should be the principal guide of an evolving American Law." Ninth International Conference of American States, American Declaration on the Rights and Duties of Man, preamble (1948). Similarly, The Convention creates the Commission and the Court as "Means of Protection." American Convention, *supra* note 5, Part II. Therefore, the Court as well as the Commission have an obligation to preserve all of the remedies that the Convention affords victims of violations of human rights so that they are accorded the protection to which they are entitled under the

awareness and establishing human rights standards,<sup>209</sup>; iii) creation of a democratic forum to discuss human rights issues<sup>210</sup> and iv) legitimization of actors.<sup>211</sup> The processing of individual complaints produces a ripple effect in both the domestic sphere, as well as in the international system, that could be important in defining the goals of such a system.

The processing of cases has very valuable effects. In the first place, it allows for justice in situations in which there has been no domestic resolution of a dispute. Second, the system enriches the regional and national juridical tradition through its interpretation of human rights norms, creating a shared hemispheric vision of the basis of freely-ratified treaties. ... [C]ases...offer solid, well-founded interpretations on [different] rights.... From a procedural point of view, the group cases...offer valuable insight on different admissibility criteria...[T]he constant and growing judicial complexity on the cases that the Commission resolves...brings simultaneously growing demands that require expansive judicial knowledge, as much on the content of the rights themselves as on compliance with procedures already established within the system. The judicial processing of these cases contributes to the 'depoliticization' of human rights, strengthening the system and its legitimacy.<sup>212</sup>

In particular it is relevant to consider that a central objective is the domestic impact of the Inter-American system work in the Americas.<sup>213</sup> Supranational bodies will generally have the greatest impact when their procedures and judgments are relevant to the actors working to advance specific human rights in these countries.<sup>214</sup> These actors should include not only State agents, but also human rights organizations, social movements, and the media.<sup>215</sup> As such, the Commission should follow procedures that increase the relevance of court cases to domestic (and in some cases, international) movements working to eliminate the structural causes of the violations in question. In that sense, authors have criticized measures adopted by the Court, such as reducing the number of witnesses who appear in person at Court hearings or the reduction of days for public hearings in each case. While those measures reduced the length of the Court's procedure, the authors argue that the outcome was achieved at the expense of reducing the

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Convention." In the Matter of Viviana Gallardo et al. Order of the President of July 15, 1981, Inter. Am. Ct. H.R. (ser. A) No. G 101/81, ¶15 (July 15, 1981).

<sup>209</sup> The Convention specifically provides that one of the activities of the IACHR is to "develop an awareness of human rights among the peoples of America." American Convention, *supra* note 5, art. 41.1.

<sup>210</sup> See Verónica Gómez, *The Interaction between the Political Actors of the OAS, the Commission and the Court*, in THE INTER-AMERICAN SYSTEM OF HUMAN RIGHTS 177 (Harris and Livingstone eds. 1998).

<sup>211</sup> Stanley Cohen, *Government Responses to Human Rights Reports: Claims, Denials, and Counterclaims* 18 HUMAN RIGHTS QUARTERLY 517-543 (1996). "This is particularly important when many times, States argue that 'Victims are lying and cannot be believed because they have a political interest in discrediting the government. Witnesses are untrustworthy or drawn from the political opposition. Journalists and human rights organization are selective, biased, working from a hidden political agenda or else naive, gullible, and easily manipulated. If the source of the evidence can be shown to be suspect in any of these ways, then the violations obviously did not take place or are being exaggerated.'" *Id.* at 524.

<sup>212</sup> Dean Claudio Grossman, President of the Inter-American Commission on Human Rights, in the presentation of the *Annual Report of the Inter-American Commission on Human Rights of 2000* to the Committee on Juridical and Political Affairs of the Permanent Council of the OAS, Washington, D.C., (Apr. 26, 2001).

<sup>213</sup> See for the same argument with regard to the Court, Cavallaro & Brewer, *supra* note 87.

<sup>214</sup> *Id.* at 770.

<sup>215</sup> *Id.*

impact of the Court rulings on the ground. This conclusion is particularly relevant when the Commission designs measures that could help reduce its backlog and speed up its process.

As the individual complaint mechanism serves the many different goals just described, it is important to be aware that those differences could give rise to very different, and often directly contrary, suggestions on how to speed up the adjudicative mechanism.<sup>216</sup> In fact, in the context of international criminal tribunals, it was argued that “time and delay can be essential to successful prosecutions” and that “expediency in war crimes prosecutions is not always possible, or even desirable.”<sup>217</sup> The Clinic considers it essential to understand the goals of the system since the design of a speedy process should be at the service of these goals and that solutions should serve to enhance the ability of the Commission to achieve those goals.

Due to the diversity of goals, any discussion on restructuring the proceedings should consider the impact of the different measures on those goals. This limits the range of possibilities in terms of the solutions that the Commission could implement. For instance, a move to a more automatized, digitalized and web-based system could imperil the right to access to the Commission by individuals with no access to computers or Internet, as is the case in many areas in the region. In that sense, the handling of individual complaints requires open access to as many individuals as possible, particularly to those marginalized and harassed. In many ways, this goal could contradict measures intended to reduce the backlog by raising the admissibility bar, making it more difficult to file complaints with the Commission or similar measures, proposals that the Clinic strongly reject as they would run against the overall purpose of the System.

A system that is based on State participation and engagement for securing more effective implementation of its decisions may require providing more time and possibilities to a State to respond in a particular case, in order to better protect the rights of the individual. For instance, flexibility in the processing of petitions has the following impact on compliance:

[T]he flexibility gives the States the opportunity to rectify the anomalous situations that have occasioned the complaints. Because the Commission's reports are not legally binding, the Commission must be able to negotiate flexibly with governments in order to secure compliance. The Commission was created as a quasi-diplomatic body and retains diplomatic qualities despite the growth of its quasi-judicial functions. Its diplomatic nature necessitates a flexible procedure that allows for fluid discussion between the parties.<sup>218</sup>

The management of the petition system provides the Commission with different tools to promote a dialogue between the petitioners and the State. Among others, the Commission has granted leeway with deadlines to provide the States with enough time to answer complaints. It

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<sup>216</sup> Similarly, in the context of international criminal law, see Jean Galbraith, *The Pace of International Criminal Justice*, 31 MICH. J. INT'L L. 79, 82 (2009).

<sup>217</sup> Alex Whiting, *International Criminal Prosecutions, Justice Delayed Can Be Justice Delivered*, 50 HARV. INT'L L. J. 323, 363, 326 (2009).

<sup>218</sup> Michael Cosgrove, *Protecting the Protectors: Preventing the Decline of the Inter-American System for the Protection of Human Rights*, 32 CASE W. RES. J. INT'L L. 39, 48–49 (2000) (internal citations omitted).

has also applied a presumption of truth regarding pertinent facts in favor of the petitioner if the State fails to answer. The Commission created this presumption as a "last resort," intended to incentivize the State to cooperate with the Commission and to enter in this dialogue. Similarly, the Commission convenes hearings and working meetings to establish a direct dialogue with and between States and petitioners. As a space for dialogue, the individual complaint mechanism could occasionally run against the idea of a speedy processing of petitions. At the same time, a dialogue that occurs several years after the alleged human rights violation were committed could be, in many instances, completely irrelevant.

In sum, the Commission has multiple goals in the promotion and protection of human rights. These goals sometimes contradict each other. The Commission must strike the appropriate balance between quickly resolving claims about individual human rights abuses, making sure that States redress victims, and creating a culture of respect for human rights. In attempting to do so, it may sometimes have to sacrifice some goals in order to reach others. At the same time, it must take care to preserve its most important functions, and not sacrifice the promotion of human rights.

## **B. Efficiency**

Because of the Commission's limited resources, a high volume of petitions to process, the limited times the Commissioners meet annually (only three times a year), the Commission must operate with the high level of efficiency. Thus, a basic background understanding of what makes a human rights system efficient is necessary to determine the improvements that will most benefit the Commission. The characteristics of efficiency can be used to improve the Commission's process, but must be balanced with the overall effectiveness of the Commission and its goals as a human rights body.

Efficiency is often associated with "a mechanistic, profit-directed, stop-watch theory of administration."<sup>219</sup> However, such a description is inaccurate as efficiency could be more accurately defined as "the relationship between what is accomplished and what might be accomplished."<sup>220</sup> Efficiency describes "the amount of effort or energy that it takes to accomplish a certain task or operation."<sup>221</sup> In profit-seeking organizations, this is an easy measure because money is both the resource and the output.<sup>222</sup> For the Commission, this can be much harder because output is often immeasurable.

An efficient organization is one that maximizes the output that it is able to create with the resources that it has.<sup>223</sup> In this sense, the Commission's chronic lack of financial and human resources does not justify the lack of efficient use of the available resources. As often happens in any discussion dealing with the Commission's delays and backlog, the responsibility is transferred to the States for not providing the Commission with the adequate resources. While

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<sup>219</sup> HERBERT ALEXANDER SIMON, *ADMINISTRATIVE BEHAVIOR: A STUDY OF DECISION MAKING PROCESSES IN ADMINISTRATIVE ORGANIZATION* 256 (4th ed. 1997).

<sup>220</sup> *Id.* at 257.

<sup>221</sup> BRIAN OSTROM & ROGER HANSON, NATIONAL CENTER FOR STATE COURTS, *ACHIEVING HIGH PERFORMANCE: A FRAMEWORK FOR COURTS* 35 (2010).

<sup>222</sup> SIMON, *supra* note 220, at 251.

<sup>223</sup> *Id.*

this is correct, as the OAS should adequately fund the Commission, it does not dispense the Commission from attempting to be as efficient as possible with the limited resources that it has.

In order to maximize the efficiency of its operations, an organization must reduce its inefficiencies and then introduce more efficient processes.<sup>224</sup> These changes can be placed into three specific categories: (1) elimination of inefficiency, (2) structural optimization, and (3) process optimization. In addition to these three categories of changes that can directly impact efficiency, an efficient organization must also include performance measurement and performance management as tools for guiding all the changes.

### **1. Elimination of Inefficiency**

Changes that eliminate waste typically have three targets: bureaucracy, duplication, and no value-added activities. Each of these wasteful targets takes resources from the process, but is not necessary or constructive to operations.

Bureaucracy “requires following a complex series of activities that hinders an effective and efficient process.”<sup>225</sup> In an organization, this can mean that an employee must get approval from multiple managers before submitting a case to the court. For example, currently, the Executive Secretary has to sign all the correspondence that emanates from the Commission. This may have the benefit of having additional review and it helps the Executive Secretary to keep track of the processing of petitions and cases and it provides legal certainty to the parties. But, it is a bureaucratic step that a staffer handling the particular petition or case or the Coordinator of the respective regional group could perform, particularly with basic correspondence such as acknowledging receipt of additional information. This is just one example of a bureaucratic measure that wastes the time of the Executive Secretary.

Duplication occurs when different parts of an organization perform redundant and overlapping tasks.<sup>226</sup> This can occur because two parts of an organization need the same information but do not communicate with each other, so that both do the same work. For a process that transfers work between groups, there will be duplication in both efforts and information.<sup>227</sup> In the Inter-American System, for instance, the Commission and the Court both may decide on the admissibility<sup>228</sup> and the merits of any case that goes to the Court, a duplication of efforts. What is especially concerning is that this duplication between the Commission and the Court is not due to lack of communication, but a purposeful design in the Inter-American human rights system of course, this is beyond the Commission’s control. Another example at the Commission level, is that the new Rules maintain the implementation of a Working Group on Admissibility to review admissibility decisions. Nevertheless, this Working Group is required to report to the plenary of the Commission for its final approval of the decisions, while the Working

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<sup>224</sup> SUSAN PAGE, THE POWER OF BUSINESS PROCESS IMPROVEMENT: 10 SIMPLE STEPS TO INCREASE EFFECTIVENESS, EFFICIENCY, AND ADAPTABILITY 141–43 (2010).

<sup>225</sup> *Id.* at 144.

<sup>226</sup> *Id.* at 152.

<sup>227</sup> *Id.*

<sup>228</sup> The Court does so by accepting preliminary objections challenging the admissibility decision of the Commission.

Group accelerates the plenary discussions. This creates a repetitive process. It would be more efficient to create a Working Group with the power to approve those reports.

Finally, no value-added activities are emblematic of steps in the process that are inefficient.<sup>229</sup> The determination of which activities are no value added activities will be different in the case of the Commission than in the case of a profit-seeking organization, or even a court. Because the Commission's goal is to promote human rights, not merely to adjudicate cases, certain functions that do not speed up the case system will still add value to promoting ideas and structures within States. Thus the scope of what constitutes no value-added activities is much narrower in the Commission. Nevertheless, by reading the published decisions of the Commission, it is possible to see that most of the time the Commission acts in a passive way, transmitting back and forth communications between the parties and asking for additional information when both parties already submitted all the factual documentation and presented their legal arguments. Those interminable exchanges do not add any value to the final decision of the Commission nor to the clarification or solution of the case.

In an efficient system, all three of these sources of inefficiency should be eliminated, or at least minimized. There may be regulatory or legal reasons that certain valueless processes must be retained, but all other sources of waste should not remain in an efficient system.

## 2. Structural Optimization

Optimizing a process requires simplification of the process and reduction of the time it takes to complete a process, or cycle time. Simplification means reducing the complexity of a process to make it simpler and easier to understand.<sup>230</sup> This structural change not only helps the process become more efficient by eliminating wasteful actions, making it easier for participants to understand, but it also makes the process more flexible and adaptable to deal with future changes.<sup>231</sup>

The cycle time is the overall time it takes to complete a process.<sup>232</sup> There are various ways to reduce the cycle time. For example, each step in a process requires some additional time to start and gain momentum. The reduction of handoffs in a process would reduce the amount of time spent on the initial ramp-up period of each step. In addition, certain steps can be performed concurrently or in combination. By critically examining (or eliminating altogether) activities that take a long time to complete, organizations can better utilize valuable resources and improve overall efficiency.

Understanding the cycle time of individual activities or steps of a process will also help point to the step that is the bottleneck causing the backlog. A bottleneck is a step that is constraining or limiting the others.<sup>233</sup> To deal with a bottleneck, management can take the same steps discussed above to reduce cycle time such as parallel steps or redesigning the process, but

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<sup>229</sup> PAGE, *supra* note 225, at 148.

<sup>230</sup> *Id.* at 154.

<sup>231</sup> *Id.*

<sup>232</sup> *Id.* at 115.

<sup>233</sup> J. P. RUSSELL, THE PROCESS AUDITING TECHNIQUES GUIDE 62 (2003).

still a bottleneck will likely remain at some point in the process. By recognizing the critical bottleneck, management can take steps to counter the effect of the bottleneck, and ensure that the cycle time has full productivity.<sup>234</sup> A process may have multiple bottlenecks, and the location of the bottleneck will change with time, so management must be regularly performing an assessment of the cycle times for the process and the individual steps.<sup>235</sup> In the Commission, several parts of the case system process have a backlog, so there are multiple bottlenecks. According to the Commission, as of August 30, 2011, there were 5,213 petitions pending initial evaluation, 1,137 matters awaiting admissibility decision and 515 matters awaiting a decision on the merits.<sup>236</sup> Currently the focus of the Commission is on attacking the backlog of the Registry; however, this is not necessarily making the Commission faster because of the bottlenecks in other areas. Even with the maximum output of the Commission being 83 admissibility reports in 2010, at this rate it would still take nearly 16 years to address just the 1,137 matters awaiting admissibility decisions. This is without taking into consideration the new petitions that will continue to be added to the backlog. With bottleneck management, the Commission can more strategically address the bottlenecks to ensure that the result is more decisions, not more petitions introduced into the system. By joining the admissibility and merits stages, the Commission can concentrate steps and avoid the drafting of multiple additional admissibility reports.

### 3. Process Optimization

Other than structural changes as discussed in the prior section, optimizing specific processes in the operating system will improve the efficiency of the whole process. One way to do this is to use technology to improve the process.<sup>237</sup> This can be anything from using electronic forms in order to prevent transcription errors to replacing manual steps with technology. Solutions of this type could also help the Commission to save some financial resources that could be spent in other areas or relocate human resources to support crucial steps in the processing of petitions.

Another way to optimize a process is job specialization. Specialization is effective because individuals responsible for different procedural steps can gain unique skills and knowledge that relates to their respective procedures rather than learning, on a superficial level, the skills necessary for every procedure. However, there are potential drawbacks to specialization such as job dissatisfaction that can arise from repetition and boredom and lead to a lack of productivity, so specialization may not necessarily lead to greater efficiency.<sup>238</sup> The potential benefits and risks of specialization should be carefully considered.

The Executive Secretariat of the Commission has restructured its regional groups to allow its staff to specialize in cases at either the admissibility phase or the merits phase. It is unknown whether this has led to greater efficiency, but, as discussed above, it has probably led to greater

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<sup>234</sup> KENNETH N. MCKAY & VINCENT C. S. WIERS, PRACTICAL PRODUCTION CONTROL: A SURVIVAL GUIDE FOR PLANNERS AND SCHEDULERS 213 (2004).

<sup>235</sup> *Id.* at 205.

<sup>236</sup> Commission's Answers, *supra* note 9, at 16.

<sup>237</sup> PAGE, *supra* note 225, at 160.

<sup>238</sup> *Id.* at 121.

ramp-up time for each staff member. Specifically, each staff member has to spend time getting acquainted with a case, duplicating the effort of the prior staff member handling the petition.

#### **4. Performance Measurement and Management**

Every efficient system requires a performance measurement and management scheme. The performance measurement system allows management to evaluate the results of the system, identify the problems, and take corrective action.<sup>239</sup> “The challenge of court management is precisely to adjust administrative practices until desired objectives are achieved, as defined by administrative principles. Knowing if a court is moving closer to high performance is essential to making successful adjustments.”<sup>240</sup> Without a set of measurements, there can be no understanding of what the current system can accomplish and its weaknesses and strengths. Trying to achieve high performance without performance measurement is the equivalent of managing blindly.

Beyond having an impact on systematic corrective actions, performance measurement and management create better performance within the organization due to the increase in transparency and accountability and the built-in system to manage performance. This allows actors in an organization to understand what their goals and objective are and strive towards them. This way, they will be able to better control their performance and results towards the goals that the organization has set.<sup>241</sup> Generally, “[s]elf-control means stronger motivation: a desire to do the best rather than do just enough to get by.”<sup>242</sup> Successful performance measurement and management can also “[a]lign performance between units and levels with the organization’s values, goals and strategy”; “[provide] a basis for operational human capital decisions”; and “[improve] relationships, so there is an understanding and insight between employees and managers.”<sup>243</sup> In light of this, the Clinic praises the Commission’s efforts in strengthening performance management and determining reasonable amounts of time for the Commission’s work. In 2011, the IACHR completed its first year of full implementation of the Performance Evaluation System (PES) (which was introduced in 2010).<sup>244</sup> Furthermore, the Strategic Plan has outlined specific performance goals for all of its individual petition work;<sup>245</sup> however, this is still reliant on its ability to meet the specified funding goals. The efforts of the IACHR demonstrate that the Secretariat of the Commission is cognizant of ways to improve performance measurement and management.

#### **C. Balancing Efficiency with Effectiveness in the Commission**

Reduction of waste, structural optimization, and process optimization can all be applied to the Commission in some respect, along with the appropriate performance measurement and management tools, to make it more efficient. Efficiency, however, should not be the only goal of

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<sup>239</sup> OSTROM & HANSON, *supra* note 222, at 3.

<sup>240</sup> *Id.* at 28.

<sup>241</sup> See PETER F. DRUCKER, *MANAGEMENT: TASKS, RESPONSIBILITIES, PRACTICES* 346 (1999).

<sup>242</sup> *Id.*

<sup>243</sup> ELAINE D. PULAKOS, *PERFORMANCE MANAGEMENT: A NEW APPROACH FOR DRIVING BUSINESS RESULTS* 5 (2009).

<sup>244</sup> Commission’s Answers, *supra* note 9, at 1.

<sup>245</sup> Strategic Plan II, *supra* note 111, Part II, Program 2, Plans of Action 2.1 to 2.3.



the Commission. As stated, *supra* Section III(C), the Commission has a diversity of goals that involves both the need to resolve cases in a timely manner, and coordinating the impact of those cases within States. It is crucial that the Commission makes changes with an acute awareness of the potential impact on the Commission's effectiveness. The Commission should strive to balance both effectiveness and efficiency, which at times conflict with each other. For example, a rigid structural optimization may increase efficiency, but leave less flexibility for negotiation with States to ensure compliance with the Commission's recommendations. On the other hand, effectiveness and efficiency are not always conflicting; sometimes they complement or support each other. For example, the elimination of duplicative processes may speed up the length of time to process a case without affecting the substance of the decisions, thus increasing petitioners' feelings of access to justice. With the right balance, the Commission will resolve more cases faster and also maximize its impact on the promotion of human rights within member States.



## V. Potential Lessons Learned from Other Human Rights Bodies and Courts

While keeping in mind the interplay of effectiveness and efficiency as a basic framework, in this section, the Clinic examines how other bodies have dealt with backlogs in their case systems. The Clinic will first examine the Inter-American Court of Human Rights; then to the reforms that dealt with the similar backlog problem in the European Court of Human Rights; then to the United States Customs and Immigrations Services, to see how it has incorporated existing technology to heighten transparency and avoid duplication; finally, the Clinic will observe the way the United States appeals system handled its huge backlog in the 1990s, and how it currently adjudicates large numbers of cases. These comparisons are meant to provide ideas for reform for the Commission. However, due to the unique goals and functions of the Commission as a human rights body with multiple tasks including quasi-judicial ones, the Clinic acknowledges that there are limitations to the comparisons, and does not mention other Courts and bodies to measure the Commission's performance against them.

### A. The Inter-American Court of Human Rights

In 2003, then-President of the Court, Judge Garcia Ramirez, stated:

Now this increase in the caseload, which seems to be part of a clear, irreversible trend, naturally gives rise to concerns which I must share with you. Obviously the accumulation of cases could lead to administrative delays, and afterwards to the excessive prolongation of proceedings. I hardly need mention the consequences this would entail. You will recall the wise saying that '**delayed justice is equivalent to denial of justice.**'<sup>246</sup> [emphasis added]

At the time he made this remark, the Commission had already adopted the 2000 reforms. Prior to these reforms, the Commission had complete discretion over whether or not to submit a case to the Court. With the reforms, submission to the Court became the default procedure and the number of cases submitted to the Court per year doubled.<sup>247</sup> In dealing with the length of its procedure, the Court has used a different approach than the Commission. It is important to note however, in contrast to the multiplicity of the Commission's tasks, the Court deals almost exclusively with adjudicating cases. Furthermore, the Court took measures to prevent a backlog, and did not have to deal with an expansive backlog like the Commission is currently dealing with. Neither has the Court had to deal with more than a thousand new cases a year as the Commission. As such, a comparison with the Commission has its limitations, and the Clinic acknowledges this. However, the Clinic still believes that a comparison can be useful for it can provide a framework to begin to think of novel ways in which to reduce its backlog and prevent future backlog.

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<sup>246</sup> Presentation by The President-Elect of the Inter-American Court of Human Rights, Dr. Sergio García Ramírez in Permanent Council of the Organization of the American States, Report of the Chair of the Committee on Juridical and Political Affairs on the Observations and Recommendations of the Member States on the Annual Report of the Inter-American Court of Human Rights, CP/CAJP-2142/04 rev. 1, (May 17, 2004).

<sup>247</sup> See Human Rights Clinic case database; Cavallaro & Brewer, *supra* note 87, at 780.

The Court has been able to improve its efficiency in adjudication. To deal with its sudden increase in caseload, the Court combined its preliminary objections, merits, and reparations decisions into one decision.<sup>248</sup> The Commission took in 2000, and maintained in 2009, exactly the opposite direction of the Court, dividing the process in two stages rather than concentrating it into one. As a result of this and other changes, the Court has been able to reduce the time it takes to hear a case, even while its caseload has increased. Although the average time from when a petition is filed with the Commission to when it is decided by the Court increased by one year and five months after the Court combined its decisions, that increase actually represents an increase in the Commission's process, not the Court's. After the Court changed its procedure to combine decisions (and the Commission divided decisions at the same time), the average time that a petition or case spent in the Commission more than doubled, while the average time a case spent with the Court decreased.

When the Court issued separate decisions on preliminary objections, merits, and reparations, it took an average of two years and two months for a case to be fully resolved by the Court. Now that the Court has combined the decisions it takes an average of just over one year and seven months.

The Court was able to increase its efficiency, while demand was also increasing. After 2000, the Court changed its procedures not to maintain the status quo as the number of cases increased. As the chart below shows, the number of cases submitted to the Court increased from twenty-four cases between 1996–2001 (an average of less than four per year), to seventy-one cases between 2002–2007 (an average of less than eleven per year).<sup>249</sup> This trend seems to be continuing. In 2008 the Court decided sixteen cases and in 2009 it decided seventeen cases. The number of cases the Court currently decides in one year is approaching the number of cases it decided in the five years before the reforms. In 2010, that trend lessened as the Court decided only nine cases. However, as of the date of publication of this report, the Court has already decided ten cases in 2011.<sup>250</sup>

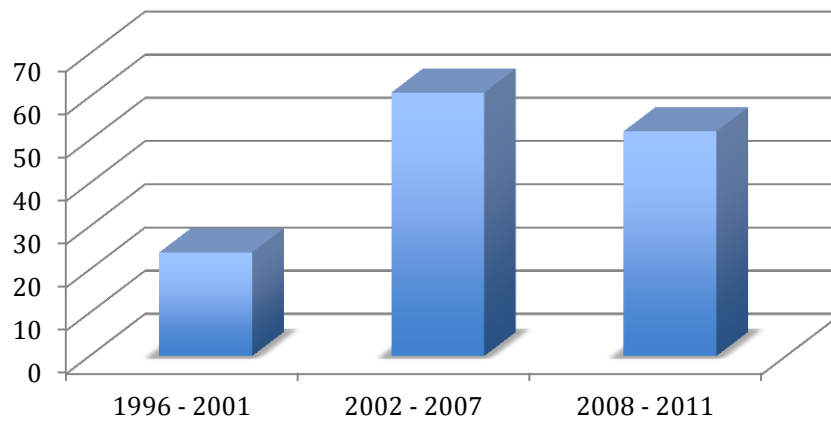
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<sup>248</sup> Cavallaro & Brewer, *supra* note 87, at 781.

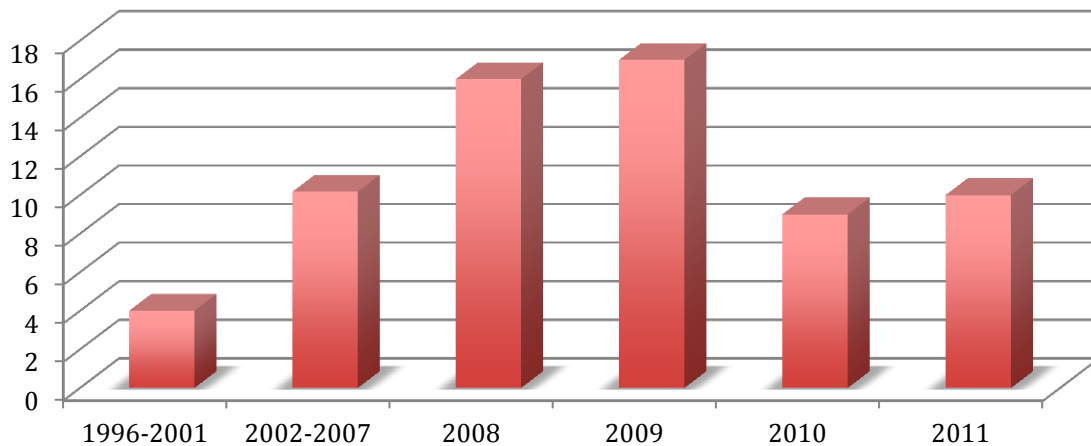
<sup>249</sup> Annual Report 2009, *supra* note 61, at ch. III(B); Inter-Am Ct. H.R., Annual Report of the Inter-American Court of Human Rights 1996, ch. II (I) (1996), <http://www.corteidh.or.cr/docs/informes/1996.pdf>; Inter-Am Ct. H.R., Annual Report of the Inter-American Court of Human Rights 2010, ch. IV (2010), [http://www.corteidh.or.cr/docs/informes/2010\\_eng.pdf](http://www.corteidh.or.cr/docs/informes/2010_eng.pdf).

<sup>250</sup> “Jurisprudence: Judgment and Decisions” Inter-American Court of Human Rights <http://www.corteidh.or.cr/casos.cfm> (last accessed September 27, 2011).

## Cases Decided by the Court from 1996 - 2011



## Average Number of Cases Decided per Year



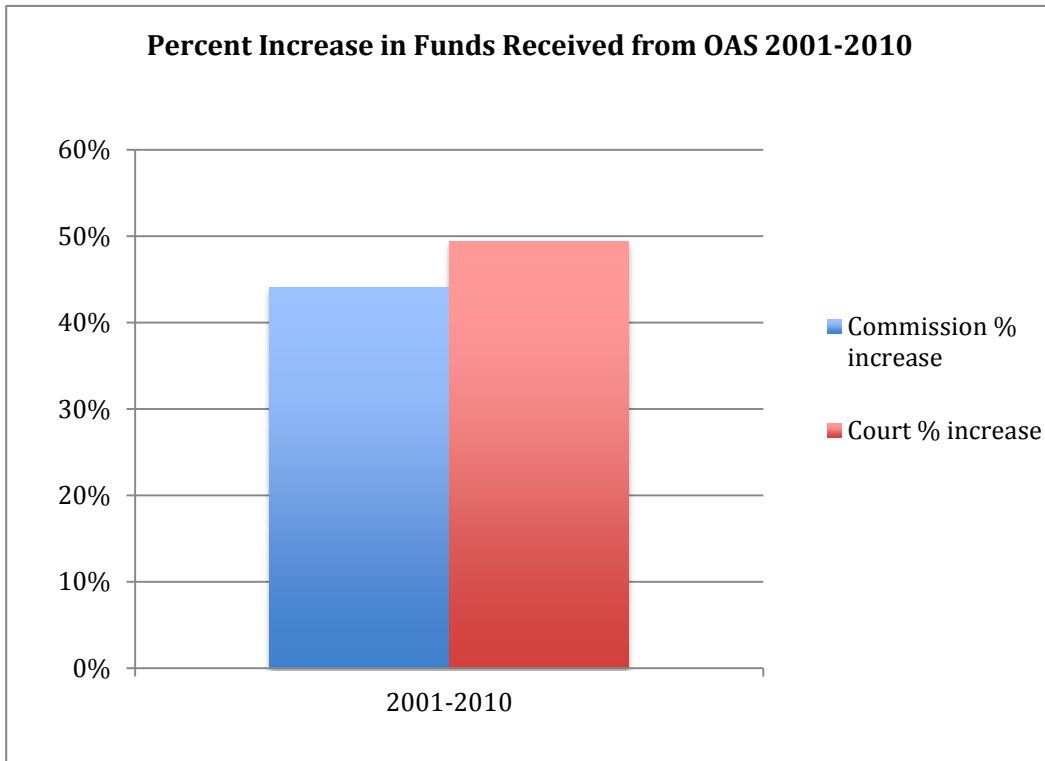
The Court has explained

The Court has made a considerable effort to reduce the duration of the cases before it. The principle of “reasonable time” that derives from the American Convention and from Court’s consistent case law is applicable not only to the domestic proceedings within each State Party, but also to the international courts or organs whose function is to decide petitions on human rights violations. From 2006 to 2010, the average duration of the proceedings for a contentious case before the Court has been 17.4 months. This average is calculated from the date the case is

submitted to the Court until the date that the Court hands down judgment on reparations.<sup>251</sup>

The Court was also able to increase its efficiency with budget increases that were significant, but still relatively small compared to the overall budget of the OAS.<sup>252</sup> While the Court's budget has increased each year from 2001 to 2010, its rate of increase is proportional to that of the Commission. From 2001 to 2010 the Court's budget increased 49% with a total increase of \$634,800. In the same time period, the Commission's budget increased 44% with a total increase of \$1,373,900.<sup>253</sup>

	Budget from the OAS in USD									
	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010
Commission	3,114,700	3,154,500	3,200,500	3,429,900	3,077,800	3,077,800	3,677,700	3,621,300	3,746,100	4,488,600
Court	1,284,700	1,354,500	1,395,036	1,391,300	1,391,300	1,391,300	1,656,300	1,756,300	1,780,500	1,919,500
OAS	76,000,000	76,000,000	76,000,000	76,600,000	76,275,500	76,275,500	81,500,000	87,500,000	90,125,000	90,125,000

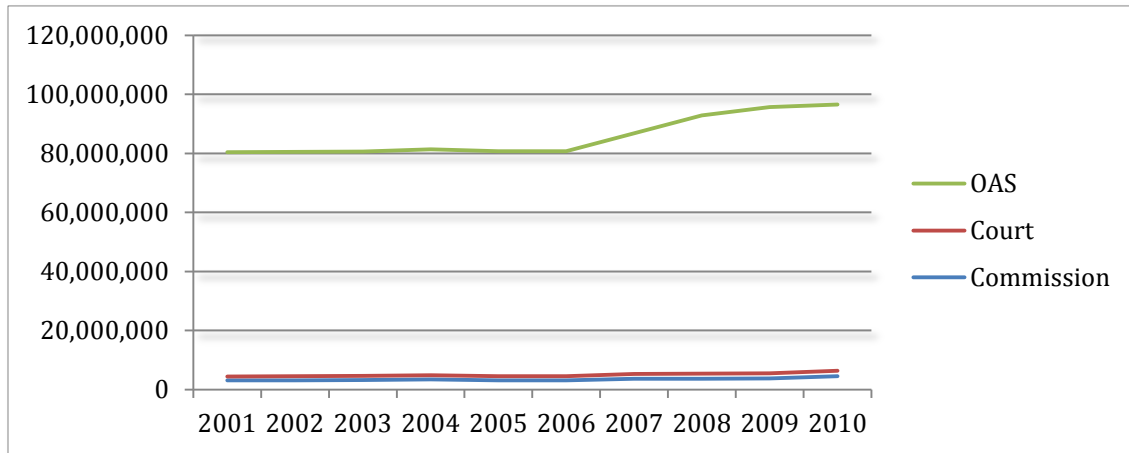


<sup>251</sup> Inter-American Court, Annual Report of the Inter-American Court of Human Rights 2010, available at [http://www.corteidh.or.cr/docs/informes/2010\\_eng.pdf](http://www.corteidh.or.cr/docs/informes/2010_eng.pdf) at 8.

<sup>252</sup> See Annual Report 2009, *supra* note 61, at 20.

<sup>253</sup> The Clinic also compared the percentage changes in funds from the OAS over shorter periods of time, but found no significant trends. Because the level of funding from the OAS is so small and fluctuates significantly from year to year, the Court might receive a larger percentage increase than the Commission one year, while the exact opposite might happen the next year.

### Comparison of OAS, Commission and Court budget



Still, the Court's budget in 2010 only constitutes 2.12%, and the Commission's budget constitutes 4.98%, of the total budget of the OAS.<sup>254</sup>

It is important to highlight that even if the budgets of the Commission and the Court remain more or less constant, the Court has also received an important influx of contributions from outside the OAS regular budget. Thus, the total income received by the Court for its operation during fiscal year 2011 was US\$3,981,592.65, of which the OAS contributed the sum of US\$2,058,100.00, which represented 51.70% of the Court's income for the year. The contributions from international cooperation constituted 48.30% of its budget. This represents an exponential growth in voluntary contributions received by the inter-American tribunal. For example, in 2008 the total budget of the Court was 2,613,319.50, of which 1,756,300.00 were from the OAS regular budget, or 67.20 of the total. Thus, in addition to the reform to its Rules combining decisions, the Court has more resources to resolve cases.

The Commission has tried to adopt measures to improve the overall efficiency of the System and the Court has not always been receptive to these changes. In 2000, the Commission approved stricter guidelines for the Commission's receipt of evidence, which had the potential to increase the Court's pace in adjudicating cases, by reducing the need for duplicative fact-finding measures. The Commission added requirements regarding the form of evidence and specificity from witnesses.<sup>255</sup> Alongside this, the Court added a provision that incorporated all of the Commission's evidence from hearings and other adversarial proceedings, unless it was absolutely necessary for the Court to duplicate the evidence.<sup>256</sup> Petitioners were still able to independently submit their own documents to the Court, however.<sup>257</sup> With the new evidentiary submission changes, the Commission could act as a fact-finder and the Court could focus on adjudicating the case, without duplicating efforts. Unfortunately, the evidence duplication

<sup>254</sup> *Id.*

<sup>255</sup> See 2002 Commission Rules of Procedure, *supra* note 102, art. 63.

<sup>256</sup> Inter-Am. Ct. H.R., Rules of Procedure of the Inter-American Court of Human Rights art. 44 (Dec. 4, 2003), [http://www.corteidh.or.cr/reglamento\\_eng.cfm](http://www.corteidh.or.cr/reglamento_eng.cfm) [hereinafter Court Rules of Procedure].

<sup>257</sup> Press Release 18/00, *supra* note 128, ¶17.

provision in the Court's rules of procedure has been ignored.<sup>258</sup> The Court continues to make factual determinations that are already in the record, sent by the Commission, even in cases where the State does not contest the factual allegations.<sup>259</sup> The Court has also continued to take repetitive questions of admissibility, which the Commission already decided but the Tribunal accepts them as preliminary exceptions. Even when the *Convention* clearly indicates that the Commission has the power to declare a petition admissible or inadmissible (articles 46 and 47) the Court uses Article 62, Section 3, which indicates that it has jurisdiction over "all cases concerning the interpretation and application of the provisions of [the] *Convention* that are submitted to it", as the basis for reviewing everything that has been decided by the Commission, including its determination on admissibility. As the data indicates, after two or three years of processing, the Commission determines that a case is admissible, years later the Court can go back and deliberate the exact same issue with the exact same arguments and facts if the State requests that it be done. Worse, this possibility of appealing the determinations on admissibility at the request of States does not exist for individuals whose petitions were declared inadmissible by the Commission, because they cannot appear before the Court to challenge the inadmissibility decision.

In 2009, the Commission and the Court changed the way the Commission transfers a case to the Court. Prior to this, the Commission had to write a full legal brief with all legal arguments and evidence before submitting to the Court for review. Now, when transferring a case to the Court, the Commission must only submit a merits report, including all previously required information, plus observations on the State's answer to the Article 50 report, and reasons for submitting the case to the Court.<sup>260</sup> Additionally, the Commission must send all documents pertaining to the case, to the Court, upon the Court's request.<sup>261</sup> That way the evidence submitted to the Commission is preserved and may be used in the Court's proceedings. Before 2000, the petitioner only participated in the merits phase.<sup>262</sup> In the more recent 2009 changes, the Court has reduced the Commission's role as advocate in Court proceedings and has given it more of a neutral position.<sup>263</sup> This change provides more emphasis on the petitioner and State as parties to the case with each, having more procedural equality.<sup>264</sup> The Commission, however, still presents final observations after both parties have made oral arguments.<sup>265</sup> To support the petitioner's new role in Court proceedings the Court has also implemented a new program appointing an Inter-American Defender as a legal representative for petitioners with no attorneys.<sup>266</sup> As a result, petitioners can be represented, no matter their economic status.<sup>267</sup> These measures show the inter-connected nature of the Commission and Court's procedures.

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<sup>258</sup> Ariel Dulitzky, *The Inter-American Human Rights System Fifty Years Later: Time for Change*, REVUE QUÉBÉCOISE DE DROIT INTERNATIONAL, Special Edition 2011.

<sup>259</sup> *Id.*

<sup>260</sup> Commission Rules of Procedure, *supra* note 6, art. 74.

<sup>261</sup> *Id.* art. 75.

<sup>262</sup> 1996 Court Rules of Procedure, *supra* note 142, art. 23.

<sup>263</sup> Inter-Am. Ct. H.R., Statement of Motives for the Reform of the Rules of Procedure, 2, *available at* [http://www.corteidh.or.cr/reglamento\\_eng.cfm](http://www.corteidh.or.cr/reglamento_eng.cfm).

<sup>264</sup> *Id.*

<sup>265</sup> *Id.* at 3.

<sup>266</sup> *Id.*

<sup>267</sup> *Id.*



It remains to be seen if the changes in 2009 will have an impact on the backlog and delays at the Commission level. If the Commission does not take a prominent role in the litigation of cases at the Court, if it is not required to prepare an additional brief to submit the case to the Tribunal, and if its role in the public hearings is more limited, it is possible that the Commission could re-allocate some human resources and the time of its professionals to deal with its backlog rather than to litigate in front of the Court. It is too early to judge the impact and advisability of these reforms though.

The Clinic recognizes that there are limitations to the some of the efficiency reforms the Court has undertaken. Part of the reduction in wait time in the Court may be a result of decreasing the amount of time available for hearings and presenting evidence,<sup>268</sup> but it is not clear whether or not this is a procedure that the Commission should follow. The increased efficiency in the Court's procedure correlates with the Court's decreased time for hearings in each case, limiting them to one or two days.<sup>269</sup> The Court has increased the number of witnesses who can submit evidence via affidavit, foregoing actual testimony.<sup>270</sup> However, the reduction in hearings and testimony may negatively impact effectiveness because hearings are often the focal point for domestic advocacy groups.<sup>271</sup> Critics of the Court claim that these changes make the Court sacrifice too much of its "most useful function" for efficiency by focusing on caseload reduction.<sup>272</sup> Along with the truncated process, the Court is stricter in the enforcement of deadlines against the petitioner and the States. The Court's more rigid deadlines seem to indicate that it has made a conscious choice to emphasize efficiency at the potential detriment of effectiveness. It is unclear whether or not this is the right balance for the Court to strike or if this is a model that the Commission should follow. Nevertheless, reducing hearings and testimony is a change that would not have a strong impact on the Commission's delays, as most of its procedure is written and very few petitions and cases get public hearings. Even for those cases where hearings are granted, the Commission does not allocate more than one or at the most in very exceptional cases two hours for a hearing. That time is not relevant to explain or to reduce years of delay.

Overall the increased efficiency of the Court is a product of the strong leadership pushing the reforms, clear objectives, and radical changes.<sup>273</sup> The Court just recently explained itself by stating:

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<sup>268</sup> Cavallaro & Brewer, *supra* note 87, at 781.

<sup>269</sup> *Id.* at 799.

<sup>270</sup> *Id.*

<sup>271</sup> *Id.* at 802.

<sup>272</sup> *Id.* at 795.

<sup>273</sup> Starting in 2003, the Court took a clear path toward dealing with its small backlog under the leadership of the different Presidents of the Tribunal since then and its Secretary.

Three years later, the President of the Court would evaluate the effects of the procedural reforms and practices introduced. He said, "In our view, the reform of the regulations and their use in the daily work of the Court has had positive effects on both counts. Greater celerity, obtained through reasonable practice, does not injure legal certainty and justice; rather, it strengthens them . . . . Although we have not fully attained any of these objectives, we have made appreciable progress. The streamlining of the proceedings as a result of the reform of the rules has had positive results . . . . Data exists that illustrates the advantages of said streamlining, always without detriment to legal certainty, procedural equity, and the quality of judicial orders. Under the Rules of Procedure of 1980, the average duration of contentious cases was 39 months . . . . The reforms of 2000 and 2003, strengthened with the

The successful performance of the Court is due to significant changes in procedural practices, greater efficiency in the use of time and administrative management, greater allocation by judges of time to studying cases in their countries, the hard and committed work of the Secretariat, and the budget increase thanks to voluntary contributions and international cooperation programs.<sup>274</sup>

The Court made efficiency a priority in its adjudicative functions and was successful in implementing procedures to increase the rate of adjudication. The Court's changes involved drastic measures such as combining the preliminary objections, merits, and reparations decisions and reducing the time for evidence and hearings. The lessons from the Court's changes are that an increased workload should not necessarily lead to delays or to an increased backlog. Bold decisions, streamlining procedures, strong leadership and clear objectives appear to be crucial to a success in dealing with an increased caseload and a goal of reducing the duration of the proceedings.

While the Court has handled the backlog in a different manner than the Commission, it is important to note both the differences between the Court and the Commission, and the way the two bodies function together. Unlike the Court, the Commission is not a tribunal, but instead is a quasi-adjudicatory body. In addition to its quasi-judicial functions it also performs multiple other tasks. The Court's functions, on the other hand, are limited to adjudicatory functions. The Court's smaller scope and lower number of cases it deals with, makes it easier to be more rigid regarding procedures aimed at efficiency. The Commission's promotional functions may take time and resources, and therefore impede the adoption of more drastic measures. However, there is also potential for these functions to make up for the delays they cause, by increasing effectiveness and decreasing the need for repetition. At the same, the Court and the Commission are two complementary bodies. It is important to see them in this light because changes in the procedures of one affect the other. The Clinic commends the Commission, as seven Commissioners adopt many more decisions in a year, than the seven judges of the Court. And the lawyers of the Commission handle several times more cases than their colleagues at the Court.

## **B. The European Court of Human Rights**

The European Court of Human Rights ("European Court") has faced and still faces problems with a backlog immensely bigger than that of the Commission. In 2006, it was reported that if no new cases were filed, it would take the European Court at least three years to dispose of all the cases currently filed with the Court.<sup>275</sup> The backlog at that point consisted of 82,600

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amendment of procedural practices, brought the average duration down to 20.78 months, which is almost half what it used to be. Within the framework of the procedural equity, as we noted earlier, at this time the Court is not behind with any of the matters that are being processed." Presentation by The President of the Inter-American Court of Human Rights, Dr. Sergio García Ramírez in Permanent Council of the Organization of the American States, Observations and Recommendations of the Member States on the Annual Report of the Inter-American Court of Human Rights CP/doc.4179/07 (Report of the Secretariat) CP/CAJP-2515/0 (May 16 2007).

<sup>274</sup> Permanent Council of the Organization of American States, Note from the President of the Inter-American Court of Human Rights on the short-, medium-, and long-term Budgetary needs of the Court 5, CP/CAJP/INF-124/10, (November 22, 2010).

<sup>275</sup> Lucius Caflisch, *The Reform of the European Court of Human Rights: Protocol 14 and Beyond*, 6 HUM. RTS. L. REV. 403, 404 (2006).

applications, more than half of which were filed in the previous year.<sup>276</sup> At the end of 2009, that number rose to almost 120,000.<sup>277</sup> Even more troubling was that the cases stuck in the docket were generally the more difficult cases, since campaigns to process cases more efficiently and quickly had led the lawyers of the European Court to address the more straightforward cases first.<sup>278</sup>

The previous reforms of the European System, particularly Additional Protocol No. 11, greatly affected the increased number of petitions and the inability of the European Court to keep up with the influx of cases. Additional Protocol No. 11 eliminated the European Commission on Human Rights (“European Commission”), which, like the Inter-American Commission, was the point of entry for petitions.<sup>279</sup> Previously, the European Commission would examine the strength of a complaint, and then, if merited, the European Commission would bring the case to the European Court.<sup>280</sup> The Protocol made the European Court a permanent judicial body and gave it compulsory jurisdiction over all individual claims against State party to the European Convention on Human Rights.<sup>281</sup> Along with these procedural changes, the European System expanded the number of “Contracting Parties to the Convention,” which previously only included Western European countries, to include all States on the European continent.<sup>282</sup> This expansion meant not only that more individuals could file a complaint with the European Court, but also that more of the States were newly democratic States without the institutional protections for human rights that were long established for many of the Western European States.<sup>283</sup> As a result of all of these changes, the number of cases before the European Court grew at an alarming rate, and the number was projected to reach 250,000 by 2010.<sup>284</sup>

## 1. Protocol 14: Initial Processing

In order to address the problems with the backlog, the Council of Europe adopted Additional Protocol No. 14 in 2004, which entered into force last June 2010. The three main provisions of Protocol 14 that deal with the initial processing of cases are:

It allows for a single judge, assisted by a non-judicial rapporteur, to reject cases where they are clearly inadmissible from the outset. This replaces the current

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<sup>276</sup> *Id.*

<sup>277</sup> Jean-Paul Costa, President of the European Court of Human Rights, Speech at the Solemn hearing of the European Court of Human Rights on the occasion of the opening of the judicial year Friday 29 January 2010, at 5, available at [http://www.echr.coe.int/NR/rdonlyres/02526B5A-039E-47B3-9F94-2393BDDDB6291/0/20100129\\_Speech\\_PresidentCosta\\_OpeningofJudicialYear.pdf](http://www.echr.coe.int/NR/rdonlyres/02526B5A-039E-47B3-9F94-2393BDDDB6291/0/20100129_Speech_PresidentCosta_OpeningofJudicialYear.pdf).

<sup>278</sup> The Lord Woolf, *Review of the Working Methods of the European Court of Human Rights*, #1545044, 49 (Dec. 2005), available at <http://www.echr.coe.int/NR/rdonlyres/40C335A9-F951-401F-9FC2-241CDB8A9D9A/0/LORDWOOLFREVIEWONWORKINGMETHODS.pdf>.

<sup>279</sup> Caflisch, *supra* note 276, at 403.

<sup>280</sup> Dana Neascu, The European Human Rights System and the European Court of Human Rights. ARTHUR W. DIAMOND LAW LIBRARY, [http://library.law.columbia.edu/guides/European\\_Human\\_Rights\\_System](http://library.law.columbia.edu/guides/European_Human_Rights_System) (last updated Jan. 2009).

<sup>281</sup> *Id.*

<sup>282</sup> Caflisch, *supra* note 276, at 403.

<sup>283</sup> See Woolf, *supra* note 281, at 8–9; see also Memorandum by the Secretary General, 12 May 2005, based on internal and external audits.

<sup>284</sup> *Id.* at 9.

system where inadmissibility is decided by Committees of three judges, and will increase judicial capacity. Protocol 14 also provides for Committees of three judges to give judgments in repetitive cases where the case law of the Court is already well-established (on length of proceedings cases, for example). Repetitive cases are currently heard by Chambers of seven judges, so this measure will also serve to increase efficiency and judicial capacity. Thirdly, Protocol 14 introduces a new admissibility criterion concerning cases where the applicant has not suffered a 'significant disadvantage', provided that the case has already been duly considered by a domestic tribunal, and provided that there are no general human rights reasons why the application should be examined on its merits.<sup>285</sup>

These changes require fewer personnel than the steps in place before Protocol 14, making more personnel available for each phase, and greater efficiency and judicial capacity.

## **2. Diverting Cases Away from the Court**

Another method to reduce the number of petitions at the beginning stages is to divert cases away from the European Court using national human rights institutions.<sup>286</sup> This method is particularly helpful in cases that involve several claims, only some of which are admissible.<sup>287</sup> In such cases, an ombudsperson can examine the totality of the situation and make an equitable decision based on facts that would not be considered in a formal trial.<sup>288</sup>

The Council of Europe also recommended that States encourage alternative dispute resolution at the national level in order to reduce the number of cases before the European Court.<sup>289</sup> It noted that in many instances alternative dispute resolution is more favorable to both parties because it can be faster and more flexible.<sup>290</sup> Similarly, there is greater discretion and the parties themselves may decide what is equitable in their case, rather than applying strict legal rules.<sup>291</sup>

The Clinic does not advocate the diversion of cases away from the Commission when no effective remedies exist at the domestic level, or when the conventional rights are not fully protected by the national authorities. Nevertheless, the Clinic believes that the idea of promoting the full implementation of the Convention at the domestic level should be a priority of the Commission that will have an indirect impact in reducing the number of petitions reaching the Commission. If victims are satisfied with the results in national human rights institutions, they will not need to submit a petition to the Commission. Strengthening domestic institutions may also increase State compliance with Commission decisions, particularly in cases that coincide with strong domestic advocacy on the same topic.<sup>292</sup>

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<sup>285</sup> *Id.* at 12.

<sup>286</sup> *Id.* at 47.

<sup>287</sup> *Id.*

<sup>288</sup> *Id.*

<sup>289</sup> Woolf, *supra* note 279, at 42.

<sup>290</sup> *Id.*

<sup>291</sup> *Id.*

<sup>292</sup> Cavallaro & Brewer, *supra* note 87, at 790.

### 3. Additional Protocol 14: Friendly Settlement

European States decided that the promotion of friendly settlement could be an efficient measure to deal with the European Court's backlog. Thus, Protocol 14 adopted measures to encourage friendly settlement. These measures include the stipulation that the European Court will adopt a decision, recording and giving legal weight to the agreement between the parties.<sup>293</sup> It also provided that the settlement negotiations will remain confidential.<sup>294</sup> Finally, the Committee of Ministers will supervise the enforcement of friendly settlement agreements.<sup>295</sup>

The Commission already has in place a strong mandate to promote friendly settlement under Articles 48 and 49 of the Convention. Furthermore, its Rules provide enough room for facilitating those negotiations (art. 40), to establish friendly settlement as a mandatory step in its procedure and to implement follow-up measures such as requesting information and holding hearings to verify compliance, and reporting on such compliance (Article 48). According to the Commission, "at any given point the IACHR could have between 70 and 100 petitions and cases in friendly settlement negotiations."<sup>296</sup> It is important to note that the Commission was only able to provide the Clinic with a "rough estimate" and not actual numbers. This shows the need for more effective way of keeping track of each individual case and petition as well as the Commission's overall docket from a planning perspective as the Commission should have these numbers available so it can ascertain how many friendly settlement negotiations can anticipate and accurately budget for.

The creation of a friendly settlement unit, within the Secretariat, with personnel specialized in alternative dispute resolution could greatly increase the Commission's ability to encourage settlements. As such, the Clinic is extremely encouraged by the Commission's recently published plans to create a Friendly Settlement Group.<sup>297</sup> The Clinic also believes that the Commission's recent release of a questionnaire<sup>298</sup> regarding the effectiveness of friendly settlement and ways to improve the process is a step in the right direction. This questionnaire highlights an important change for the Commission, in that it demonstrates a willingness to have an open dialogue with the various players involved in the friendly settlement process: States, ADR experts or Clinics. As the introduction to the questionnaire distinctly states, it demonstrates that the Commission is trying to "identify elements that could be included in the IACHR friendly settlement mechanism" by seeking the advice of experts in the field.<sup>299</sup>

One suggestion to the European Court, which appears to have been rejected, is the creation of friendly settlement units in satellite offices within particular countries. These units would have more ability to identify cases that are more suitable to friendly settlement, and could

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<sup>293</sup> Caflisch, *supra* note 276, at 411.

<sup>294</sup> *Id.*

<sup>295</sup> *Id.*

<sup>296</sup> Commission's Answers, *supra* note 9, at 16.

<sup>297</sup> See *supra* Section III(F); see also Strategic Plan, *supra* note 111.

<sup>298</sup> "Questionnaires on the Friendly Settlement Process before the IACHR," Inter-American Commission on Human Rights available at <http://www.cidh.oas.org/Cuestionarios.soluciones.amistosas.EN.htm> (last accessed November 28, 2011).

<sup>299</sup> *Id.*

show applicants their options regarding friendly settlement. Similarly, it was suggested that this method, meeting applicants face to face, could encourage deadlocked parties to reconsider.<sup>300</sup>

#### 4. Pilot Judgments for Systematic Problems

Another new feature implemented along with Protocol 14 was the use of pilot judgments to address systematic problems. In Resolution Res (2004)3, the Committee of Ministers invites the European Court to:

I. as far as possible, to identify, . . . what it considers to be an underlying systemic problem and the source of this problem, in particular when it is likely to give rise to numerous applications, so as to assist States in finding the appropriate solution and the Committee of Ministers in supervising the execution of judgments;

II. to specially notify any judgment containing indications of the existence of a systemic problem and of the source of this problem not only to the state concerned and to the Committee of Ministers, but also to the Parliamentary Assembly, to the Secretary General of the Council of Europe and to the Council of Europe Commissioner for Human Rights, and to highlight such judgments in an appropriate manner in the database of the Court.

The Resolution allows the European Court to identify systematic problems that affect a large number of people, and are likely to result in more cases at a later date. Once the systematic nature of a case is identified, all other cases dealing with the same issue are put on hold.<sup>301</sup> That one case is litigated, and the subsequent decisions, the “pilot judgment,” aim for the State in question to address the systematic problem at the national level for all those concerned.<sup>302</sup> Thus, all subsequent cases are encapsulated within the “pilot judgment.”<sup>303</sup>

Currently, the Commission does not have a procedure similar to “pilot judgments.” The confluence of the work of the thematic country rapporteurships, the on-site visits, and country reports allows the Commission to select cases that are paradigmatic or representative of structural problems. However, there are no specific provisions to do this in a transparent, permanent and coherent way. There are no provisions in the Rules or in the Commission’s practice that shows the possible use of these “pilot judgments.” In fact, it appears that the Commission takes the contrary approach, deciding many cases on the similar matter over and over again, despite the fact that they represent structural problems. This despite that the Commission has demonstrated that it has the capability to consolidate cases and therefore

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<sup>300</sup> Woolf, *supra* note 281, at 45.

<sup>301</sup> See Woolf, *supra* note 279, at 39.

<sup>302</sup> *Id.* at 39.

<sup>303</sup> The first European Court pilot-judgment procedure – concerning the so-called Bug River cases from Poland (*Broniowski v. Poland* [GC], 2004-V Eur. Ct. H.R. and *Broniowski v. Poland (friendly settlement)* [GC], 2005-IX Eur. Ct. H.R.) was taken to a successful conclusion since new legislation was introduced and pending cases were settled. See e.g. *Kachel v. Poland*, no. 50425/99, Eur. Ct. H.R. and 175 other Bug River Applications, (Sept. 23, 2008) available at [www.echr.coe.int](http://www.echr.coe.int).

deciding similar matter cases as one, instead of individually, especially when timely access to justice is a primary concern.<sup>304</sup>

The Clinic was informed that the Registry of the Inter-American Commission has a practice to identify systematic problems and addresses these problems by allowing petitions involving “systemic deterioration” to wait in a shorter, more prioritized docket for the decisions to process them. Information about docket jumping in cases of systematic deterioration is not available to the general public. Similarly, the Clinic could not determine, nor did its interviews yield, any exact criteria to determine whether a petition or group of petitions involve systematic deterioration. It is the understanding of the Clinic that the decisions that result from the docket jumping are also not generalized or applied to subsequent new petitions. The Commission’s method, creating a separate docket for new petitions involving “systemic deterioration,” could be understood as an embryonic practice that purports to address systematic problems, like the European Court’s pilot judgments. However, the European Court’s pilot judgment program involves flagging similar cases so that one case deals with all subsequent cases, thus addressing their repetitive nature. The Commission, on the other hand, only moves each individual new petition into a shorter docket, focusing on the speediness required for these types of cases rather than their duplication. There is also another important difference: the European “pilot judgments” are the product of a reasoned, public decision adopted by the European Court and not a confidential, classified and unpublished decision adopted by an administrative officer of the Secretariat of the Commission.

It should be highlighted, though, that the idea of pilot judgments functions if States comply with the decisions rendered in the pilot cases. As the level of compliance with the Commission’s decisions is quite low, the utility of pilot judgments should be carefully analyzed. Emphasis on follow-up measures must correspond to the implementation of pilot judgments. The Clinic applies to the Commission what was said in reference to the European Court, with regards to reinforcing the execution of the Court’s judgments:

The control system's effectiveness also depends on a large extent on the fast execution of the Court's judgments. Failure or too much delay in taking individual or general measures to execute judgments; especially judgments concerning repetitive cases will inevitably generate further individual applications to the Court. Consequently, the introduction of individual and general measures capable of providing redress to both current and future applicants will help to ease the Court's caseload.<sup>305</sup>

Pilot judgments that redress current and future applicants could reduce the burden on the Commission, but only when States comply with decisions in a timely manner.

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<sup>304</sup> Report No. 90/09, Case 12.644, Admissibility and Merits, *Medellin, Ramirez Cardenas and Leal Garcia*, ¶ 3, 7 Aug 2009 available at <http://www.cidh.org/annualrep/2009eng/US12644eng.htm> (noting that “in view of the impending risk of execution, on January 15, 2008, the Commission consolidated these three petitions into case12.644 and informed the parties that it would examine the admissibility and merits of the case jointly.”).

<sup>305</sup> Patricia Egli, *Protocol No. 14 To The European Convention For The Protection Of Human Rights And Fundamental Freedoms: Towards A More Effective Control Mechanism?*, 17 J. TRANSNAT’L L. & POL’Y 1, 17 (2007) (internal references omitted).

## 5. Simplified Summary Decisions

The European Court also allows simplified summary decisions on established matters of law. Similar to per curiam decisions, this procedure reduces the time it takes to write opinions and also avoids duplicative processes in similar cases. The new Article 28(1)(b) of the European Convention empowers judges to rule, in a simplified summary procedure, not only on the admissibility, but also on the merits of an application, if the underlying question “is already the subject of well-established case-law of the Court.”<sup>306</sup> This applies, in particular, to cases where an application is one of a series deriving from the same systemic defect at the national level; hence, a repetitive case.”<sup>307</sup>

## 6. The Application to the Commission of the European Court’s Reforms

The reform of the European Court could be used to generate ideas to alleviate the Commission’s caseload. Because both bodies are human rights bodies, they have similar goals. The Clinic notes, however, the Commission is not a court or an appellate forum. Moreover, the European Court does not have the same non-adjudicative functions as the Commission. The promotional functions of the Commission, outside of its case system, must be considered when evaluating its procedure. In addition, there are differences in the two bodies’ jurisdictions and in the context in which they operate. Some have argued that human rights are more institutionally entrenched in Europe, and that necessitates a different approach than in the Americas. However, much of the backlog in the European system is a result of the addition of states from the former Soviet bloc that do not have as entrenched democratic institutions as the rest of Europe. Others have argued that the Inter-American System involves more factual disputes than the European system.<sup>308</sup> As a result, the factual determinations are much more important for the Inter-American System, therefore requiring more attention to individual cases in the Inter-American Commission. Finally, in the Inter-American system there is not a body such as the Committee of Ministers. With these concerns in mind, the Clinic still believes that the European Court system’s changes are useful guides for the Commission at least to think about innovative approaches.

### C. The United States Court System

Two years before his death, Justice Irving Kaufman, judge for the U.S. Court of Appeals, 2<sup>nd</sup> Circuit, and for the Southern District of New York, wrote:

[T]he federal courts system has entered a period of crisis . . . . The problem is not merely one of harried judges. Litigants, people with grievances, are being denied meaningful access to the courts. Delay prevents the courts from doing their job – resolving people’s disputes at reasonable costs so that they may return to their

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<sup>306</sup> Convention for the Protection of Human Rights and Fundamental Freedoms as amended by Protocols Nos. 11 and 14, June 1, 2010, C.E.T.S. 194, art. 28(1)(b).

<sup>307</sup> See Egli, *supra* note 306, at 13 (internal references omitted).

<sup>308</sup> Cavallaro & Brewer, *supra* note 87, at 793.



normal lives . . . Flexibility, experimentation, and a willingness to innovate are essential if the administration of justice is to keep up with the society we serve.<sup>309</sup>

At the time he wrote this, the United States Court system was beyond overwhelmed and alternative options were needed, fast. Judge Kaufman realized this and advocated for alternative dispute resolution (ADR), noting that “lessening the flow” of cases would be one way in which Courts could address the problem.<sup>310</sup> Though his notions might have sounded radical in 1990, they were completely accurate, and today ADR is widely used and has greatly reduced the backlog of cases in the United States court system.<sup>311</sup> By doing what was essential, albeit radical, the U.S. Court system was able to save itself from itself.

The Clinic compares the Commission’s delay to that of domestic courts because: “delay and backlog are a common problem in many domestic legal systems. Understanding the causes of backlog and delay in the domestic context could assist in analyzing the Inter-American system.”<sup>312</sup> Throughout the 1970s, 1980s, and 1990s, the number of cases before the United States appeals system grew steadily.<sup>313</sup> For example, in 1982 there were 27,946 cases filed in courts of appeals and 144 judges. In 2006, by contrast, there were 66,618 appeals filed. The number of judges to handle the doubled caseload has been 179 since 1990.<sup>314</sup> Resultantly, in 2009, there were 372 cases filed per judge.<sup>315</sup> Moreover, because many cases require multiple decisions and final decisions involve three judge panels, the number of decisions per judge is actually much higher.

The courts of appeals have addressed their growing caseloads in a variety of ways. All circuits have used senior judges or judges outside of the court to decide cases, including district judges, circuit judges, and even retired Supreme Court justices.<sup>316</sup> These additional judges are brought in to complete panels and adjudicate cases, increasing the number of panels available, and consequently avoiding a large backlog of cases.<sup>317</sup> Because not all circuits have the same volume of cases, particularly overburdened circuits utilize these judges the most. For example, in 1998, more than 75% of the cases decided in the Second Circuit had a visiting judge on the

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<sup>309</sup> Irving R. Kaufman, *Reform for a System in Crisis: Alternative Dispute Resolution in the Federal Courts*, 59 *Fordham L. Rev.* 1-2 (1990).

<sup>310</sup> *Id.* at 8.

<sup>311</sup> See *Alternative Dispute Resolution Practitioner’s Guide*, Center for Democracy and Governance 8 (1998) (finding that “ADR can support and complement court reform” and that one should use ADR when “case backlog impairs court effectiveness”). The ADR Practitioner’s Guide came right after Congress passed the Alternative Dispute Resolution Act of 1998. See also Alternative Dispute Resolution Act of 1998, Pub. L. no. 105-315, 112 Stat 2993 (1998) available at <http://www.justice.gov/crt/adr/pl105-315.php> (noting that one of the findings Congress made in enacting this law was to reduce the large backlog of cases now pending in some Federal courts throughout the United States, thereby allowing the courts to process their remaining cases more efficiently.”).

<sup>312</sup> Cosgrove, *supra* note 219, at 53 (internal references omitted).

<sup>313</sup> FPP § 3506, 13 FED. PRAC. & PROC. JURIS. § 3506 (3d ed.)

<sup>314</sup> *Id.*

<sup>315</sup> *Id.*

<sup>316</sup> Dinah Shelton, *Ensuring Justice with Deliberate Speed: Case-Management in the European Court of Human Rights and the United States Courts of Appeals*, 21 *HUM. RTS. L.J.* 337, 339 (2000).

<sup>317</sup> *Id.*

panel. This is similar to a provision that was rejected by the European Court in its reforms that would have had temporary judges decide cases in States with high caseloads.<sup>318</sup>

Similar temporary personnel measures would be difficult to implement with respect to Commissioners without amending the Convention because the treaty stipulates that there will be seven Commissioners.<sup>319</sup> The Convention further states that a majority of Commissioners must agree whether to publish the final report on the merits.<sup>320</sup> Even working within the current rules, however, temporary personnel could be employed to support the Commission's functions, as is the case of the fellows currently concentrated in the Registry.

Appellate courts across the board have used technology in some way to expedite their process.<sup>321</sup> In addition to basic technologies such as email, electronic research databases, and computerized information systems, one scholar urged the appellate courts to use more cutting edge technology like "computer-aided transcription (CAT) to rapidly produce transcripts of trial proceedings, electronic filing of trial court records and appellate briefs, videoconferencing, computer-based issue tracking, and computer-based management information systems."<sup>322</sup> Electronic filings allow faster access to case documents for the public and petitioners while electronic hyperlinks between different documents speed up the review process.<sup>323</sup>

Electronic databases have already been implemented in the Commission. These measures can store and track documents to decrease the time it takes for the Commission to compile all relevant documents to a case and review the record during each procedural stage. More advanced features such as hyperlinks between documents have yet to be implemented. At the same time, electronic filing is available in the Commission, but still has some limitations.<sup>324</sup> The Clinic also encourages more use of other tools such as videoconferencing.

It has also been suggested that appeals courts use technology to identify similarities in cases.<sup>325</sup> Qualitative analysis software can be used to identify patterns in cases and more easily dispose of cases that involve fact patterns and legal issues that have already been decided.<sup>326</sup> Further, this software can be used to identify similar cases that are currently pending. These cases can then be grouped so that procedures such as oral argument are not duplicative.<sup>327</sup> Likewise, the Commission could use such software to group and track cases that involve the same problem with the same State in order to address the larger problem rather than just the individual complaint.

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<sup>318</sup> Caflisch, *supra* note 276, at 414.

<sup>319</sup> American Convention, *supra* note 5, art. 34.

<sup>320</sup> *Id.* art. 51.3

<sup>321</sup> Richard B. Hoffman & Barry Mahoney, *Managing Caseflow in State Intermediate Appellate Courts: What Mechanisms, Practices, and Procedures Can Work to Reduce Delay?* 35 IND. L. REV. 467, 487 (2002).

<sup>322</sup> *Id.* at 491.

<sup>323</sup> *Id.* at 494.

<sup>324</sup> *See supra* Section III(E).

<sup>325</sup> Hoffman & Mahoney, *supra* note 322, at 495.

<sup>326</sup> *Id.*

<sup>327</sup> *Id.*

Courts of appeals have also improved efficiency by only hearing oral arguments for certain cases.<sup>328</sup> In adjudicating appellate cases, courts have recognized that cases differ greatly, making different measures appropriate to resolve them.<sup>329</sup> As a result, each circuit has developed systems for tracking cases and determining which require the presentation of oral arguments.<sup>330</sup> This measure is also available to the Commission since procedures such as hearings and on-site visits (which are rarely used) are optional. However, making such a determination may be easier when all of the factual information is available at the beginning. As such, for the Commission, implementing this measure may be more feasible if both parties submit all information as soon as the case is registered and opened in the Commission (or during the initial admissibility determination) rather than giving parties the ability to withhold evidence until later. Also, the relevance of oral evidence and public hearings in the volume of work of the Commission is quite limited as it is mainly a written procedure.

Courts of appeals have also resorted to publishing fewer of the decisions they make because of the perceived impossibility of writing comprehensive opinions in every case. For the Commission, publishing fewer cases would create a more discretionary and confidential procedure that would not serve any of the goals of the Inter-American Human Rights System. Nevertheless, the Commission could publish simplified decisions for repetitive cases or those with no contested facts or legal issues.

Finally, there are other methods that the courts of appeals use to deal with their increased caseloads. In many circuits, the clerk's office can act on procedural matters and may dismiss cases in which appellants do not respond to notices. This authority is in some way similar to the authority given to the Executive Secretariat in the Commission in the revision of petitions. Additionally, many Judges create a "culture of settlement" in their court, using alternative dispute resolution, encouraging settlement early and enforcing the agreements arranged.<sup>331</sup> These measures are intended to make the initial processing faster, more efficient, and in many cases, more effective. The Commission may explore this possibility by asking the parties their interests in entering a friendly settlement procedure in their first submission rather than after deciding on the admissibility of the petition.

Managing caseloads and being efficient in the U.S. appeals system involves some different considerations than those of the case system for the Commission, but many of the solutions for the U.S. courts of appeals can also be applied to the Commission. Large procedural differences exist because the U.S. appeals system is connected to a network of trial courts and because it often decides multiple motions on different issues. The U.S. Courts of appeals have managed to decide multiple issues at different stages without encountering the same degree of problems as the Commission.

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<sup>328</sup> FPP § 3506, 13 FED. PRAC. & PROC. JURIS. § 3506 (3d ed.)

<sup>329</sup> John C. Godbold, *Improvements in Appellate Procedure: Better Use of Appellate Facilities*, 66 A.B.A.J. 863 (1980).

<sup>330</sup> Shelton, *supra* note 317, at 341.

<sup>331</sup> Sean Burke & Matthew Webster, *Facilitating Friendly Settlements in the Inter-American Human Rights System: A Comparative Analysis with Recommendations* 19 (May 1, 2010), available at SSRN: <http://ssrn.com/abstract=167660>.

## D. The United States Citizenship and Immigrations Service

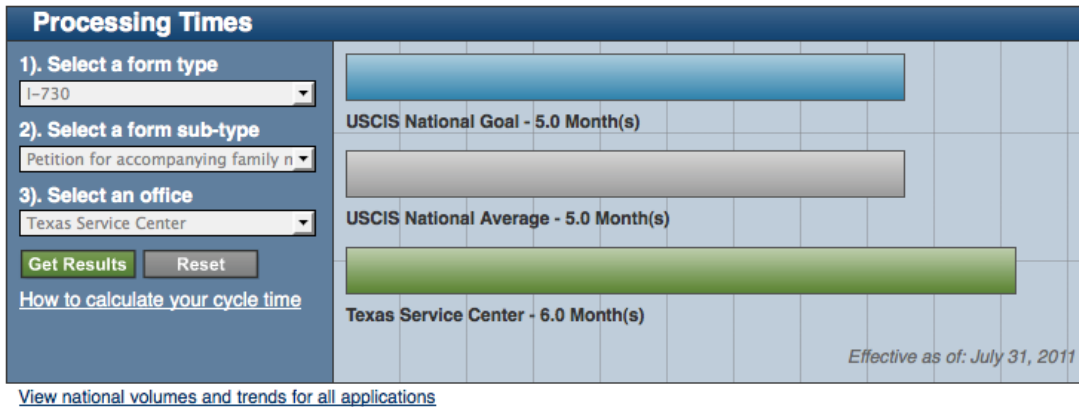
The United States Citizenship and Immigration Service (“USCIS”) handles many petitions and applications for immigration benefits in the United States. After 9/11, the Immigration and Naturalization Services (“INS”) ceased to exist in the United States, and all immigration service functions were transferred over to the Department of Homeland Security, including USCIS. USCIS’ use of technology to bolster transparency, and similarity to the Commission, as a quasi-judicial body, makes it an apt comparative study.

The Commission could learn from USCIS’ website and the amount of information available to the public on it. In 2009, the USCIS completely redesigned its website. Among other changes, the website now provides applicants and their attorneys with information about case status (e.g.: where in the process their case was). The website also provides information on the average time that it takes for a particular case to be adjudicated by each individual office.

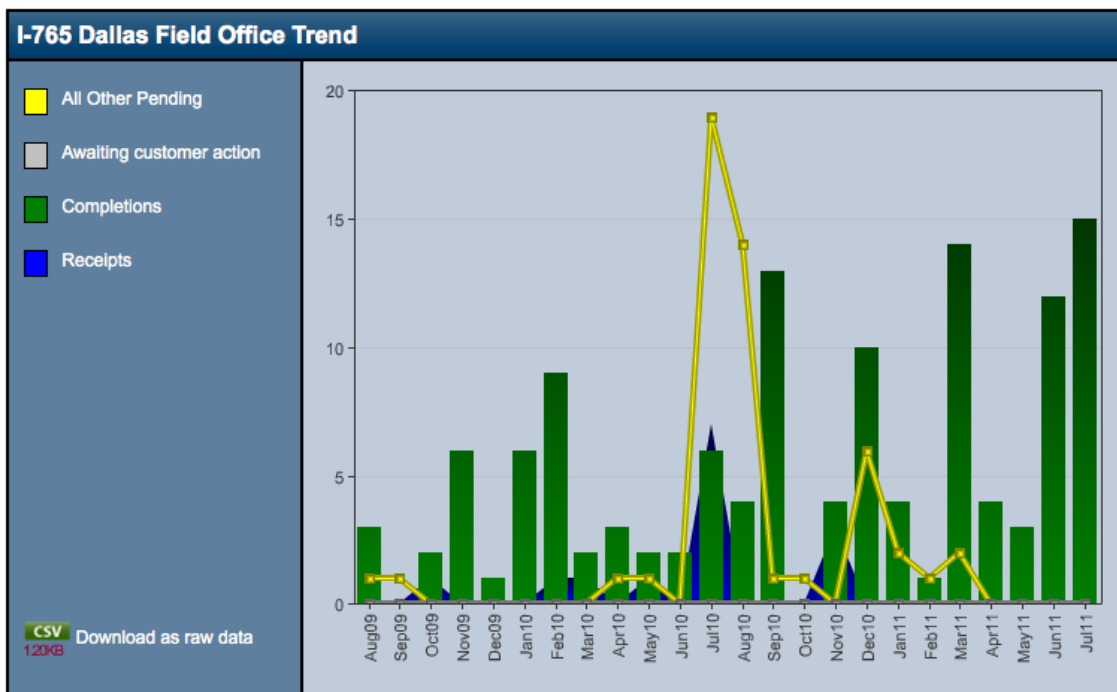
You can register for automatic case status updates by email and text message by [creating an account](#).

As shown above, once a petitioner enters in her case number, she will see a blue dot highlighted over which part of the process her case is in. There is also a summary of each stage of the adjudication process, so that the petitioner can know what to expect (e.g.: perhaps a “request for evidence” letter or perhaps a letter was already mailed to her, but she never received it, due to various reasons). From here, she can also see how long she might expect before her case is fully adjudicated, with a decision. Of course, the information provided is necessarily general and does not advise the applicant as to the content of any decision or communication and does not provide any information about why a delay might be occurring in a particular case. Additionally, the publicly available database is not searchable. Thus, unless the user has the

specific receipt number he or she cannot use it even if in possession of relevant information, such as the name of the applicant.



This information is constantly updated, and the USCIS even publishes how well each of its offices is doing. In parallel, the USCIS website offers information on the performance of each office as exemplified by the chart below.



The effort to make information available online has undoubtedly positioned the USCIS to achieve these objectives. The USCIS website even gives detailed instructions when downloading an application form on how to fill out the form, what type of evidence should be submitted, and what kinds of cases “win,” versus what type “lose,” so as to ensure that its public and petitioners are fully informed. Additionally, USCIS has stated that by the end of fiscal year 2011 (although it appears that it is not going to meet the goal), they will provide the following capabilities online:

- Customers and representatives will be able to create individual electronic accounts that can be managed online.
- Customers and representatives will be able to file electronically, schedule biometric appointments, and update account information (change of address, etc.).
- Customers and representatives will be able to upload evidentiary documentation electronically. Critical information and evidence will be easily accessible and maintained electronically.
- In a manner consistent with privacy rules, immigration partner agencies will be able to query core customer and benefit information in this initial release, which will contribute to national security and improve the accuracy of customer information.<sup>332</sup>

Moreover, USCIS has adopted an ombudsman to report on yearly performance to the U.S. Senate, and adopt recommendations to further “increas[e] engagement with the public, provid[e] greater transparency, [and] operat[e] more efficiently.”<sup>333</sup>

All of these adjudicative bodies – the Inter-American Court, the European Court, the U.S. Courts of Appeals, and U.S. Citizenship and Immigration Service—can provide useful, practical, and efficient ideas for the Commission to not only streamline its process, but also maximize its current resources. Though there may be differences between the bodies and the Commission, the application of the ideas should not be hindered by that. The Clinic believes that in implementing even just a small proportion of these ideas would allow the Commission to begin to obtain its goal of efficiency and effectiveness.

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<sup>332</sup> USCIS Response to the Citizenship and Immigration Service Ombudsman’s 2010 Annual Report, U.S. Citizenship and Immigration Services, November 2010.

<sup>333</sup> Annual Report 2010, Citizenship and Immigration Services Ombudsman, June 30, 2010 *available at* [http://www.dhs.gov/xlibrary/assets/cisomb\\_2010\\_annual\\_report\\_to\\_congress.pdf](http://www.dhs.gov/xlibrary/assets/cisomb_2010_annual_report_to_congress.pdf).

## VI. Conclusion and Recommendations to the Inter-American Commission

On April 7, 1993, the Commission received a petition regarding the forced disappearance of Gerson Jairzinho González Arroyo from Colombia.<sup>334</sup> After a failed friendly settlement attempt in 1996,<sup>335</sup> the petitioners and the State continued to send back and forth responses until 2003.<sup>336</sup> From 2003 to 2009, neither party, nor the Commission did anything.<sup>337</sup> Finally, in October 2010, **after seventeen years**, the Commission decided the case was **admissible**.<sup>338</sup> The Commission has to still look to the merits of the case and then make a final decision. In the admissibility report, the Commission noted, “[a]fter 16 years the criminal proceedings remain at a preliminary stage which demonstrates an unwarranted delay according to the provisions of Article 46.2.c of the American Convention.”<sup>339</sup> (emphasis added). Yet, it is curious that while writing this, to just get to the preliminary stage of the Commission’s decision process, admissibility, the petition took **seventeen years** to decide. The sense of justice and fairness is particularly affected by these types of situations

The Clinic has identified three overarching obstacles that the Commission faces in its case system: a large backlog of petitions waiting to be dealt with by the Commission, a long time period before petitions/cases can be fully resolved, and an insufficient number of petitions/cases that are fully resolved with a merits decision.

The Clinic recognizes that an important obstacle for the Commission is a lack of resources. As explained *supra* Section II(A)(4), the OAS does not allocate enough funds to the Commission to sustain its multiple functions. The Commission repeatedly requests additional resources and has recently objected to the shortfall, saying that it “affects not just its capacity to manage its own logistics, but also seriously affects its ability to perform its functions under inter-American conventions and the mandates entrusted to it by the OAS General Assembly.”<sup>340</sup>

The Commission must balance its efficiency and its effectiveness. This is not an easy task. These characteristics are hard to measure, and the Commission’s multiple functions and resource constraints further complicate the problem. The Commission’s multiple functions necessarily mean that the case system is only one of several measures of its effectiveness. The Commission’s resource constraints mean that the Commission must make difficult decisions about which tasks to emphasize. The resource constraints also mean that efficiency within the Commission is vital to its success. However, not all of the Commission’s problems are attributable to lack of funding. Additionally, not all of the solutions depend upon the reception of additional financial resources. In balancing its efficiency and effectiveness, the Commission must consider broad goals such as equity and justice and promoting human rights in the Americas while also realizing that the growing delays may thwart its ability to actually address the problems of petitioners.

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<sup>334</sup> Report No. 123/10, Case 11.144, Admissibility, *Gerson Jairzinho Gonzalez Arroyo y Otros v. Colombia*, ¶ 1 (Oct. 23, 2010).

<sup>335</sup> *Id.* at sect. I, ¶ 8.

<sup>336</sup> *Id.* at sect. I, ¶ 9.

<sup>337</sup> *Id.* at sect. I, ¶ 10.

<sup>338</sup> *Id.* at sect. V, ¶ 1.

<sup>339</sup> *Id.* at sect IV, ¶ 46.

<sup>340</sup> Strategic Plan Part I, *supra* note 58 at 59.

The Commission's changes in the 2000 Rules of Procedure have exacerbated the above challenges. In splitting the Commission's decision into Admissibility and Merits, the rule change added another step to the process. The additional step complicates the structure of the process. These consequences contradict the efficiency goals described in Section IV(B): elimination of waste and structural optimization, respectively.

The Clinic recognizes that the Commission has implemented numerous positive changes that increase the overall efficiency of the Commission. The Clinic applauds these improvements and encourages the Commission to continue making changes to ensure an effective and efficient process. In creating organizational structures within the Executive Secretariat, such as the Registry, the Court Group, the Protection Group, and the Friendly Settlement Unit, as well as the reallocation of petitions/cases to Regional desks, rather than Country desks, the Commission improved the process of adjudication and began to address the backlog. Further, the implementation of archival decisions, while increasing the Clinic's statistics on the length of time for adjudication by processing old cases, decreases the backlog. The Commission's use of technology, such as the implementation of the PCMS, DMS, and PPP enables it to track cases, reduce costs, homogenize the process, and make it more efficient. However, there is always room for improvement and the Commission can look to bodies like USCIS to fully maximize its existing technology.

As it is, the large backlog, the long wait times, and limited number of fully resolved cases indicates that the Commission's challenges have reached a point where it could be hindering the effectiveness of the Commission. As a result further changes are needed. However, these changes cannot be such that alter the purpose and goals of the Commission. Based on its findings, the Clinic suggests the following set of recommendations for the OAS and the Commission.<sup>341</sup>

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<sup>341</sup> The Clinic wishes to note that all the changes that it proposes require only changes in practices or in the Rules of Procedure. Thus, all the recommendations (with the exceptions of the financial resources) are under the control of the Commission and could be implemented by the Commission itself. The Clinic purposely avoided making any recommendations that would require amending the Convention or the Statute requiring State participation and involvement. Nevertheless, the Clinic wishes to bring to the attention of the Commission that its Director in several publications has advocated for amending the American Convention to clearly establish a division of duties between the Commission and Court in the matter of processing individual complaints. The new conventional model would operate as follows: The Commission would be exclusively an organ of admissibility and friendly settlements whereas the Court would be in charge of gathering and receiving evidence and deciding on factual and legal matters. While the Commission's activities would be limited to approving reports on admissibility and to opening a stage of friendly settlements, the production of evidence before it would be very narrowly limited to aspects of admissibility. Moreover, a decision by the Commission on admissibility would be "final," without the ability to appeal to the Court, as the function of review would not be in the Court's jurisdiction. Regarding the friendly settlement procedure, Dulitzky proposes having a pre-determined time frame, of 6 months, for example, which could be extended only by agreement between the petitioners and respective State. Should the matter be resolved, the Commission would publish a report, as is the current procedure. Under this model, however, if a resolution does not ensue, the case would go to the Court automatically, without the Commission preparing a complaint or becoming a complainant. As a result, the Commission would be sending the case to the Court, without making any determination of fact or law on the matter. In this process, once the case has reached the Court, the dispute is then between the alleged victim and the State in question. Rather than acting as a litigant, the Commission would serve as the main organ of the Organization, which represents the States, assisting it in the efforts to adjudicate efficiently and effectively. The Court would be the sole entity taking decisions on alleged and proven facts. *See e.g.* Ariel



## A. Financial Resources

The Clinic acknowledges that the Commission's financial resources play an important role in its promotional and adjudicative functions. The Clinic recognizes that the Commission is underfunded and understaffed and that the OAS should increase funding to the Commission. The Clinic believes that the OAS should be responsible for allocating more resources to help the Commission reverse the increasing backlogs and delays. Providing the necessary funds avoids conflicts of interest for donating Member and Observer States, and is, simultaneously, more sustainable in the long run.<sup>342</sup>

The Clinic recognizes that the Commission has launched fundraising campaigns that involve targeted goals aimed at specific functions of the Commission.<sup>343</sup> Such methods signal a move in a positive direction and should enable the Commission to secure more funding. The Commission's approach to fundraising should continue to focus on the publicized goals of the Commission, minimize conflicts of interest, and bear in mind the long-term sustainability of such financial contributions. Moreover, the Clinic commends the Commission for its plans to monitor and analyze its funding operations in order to both secure adequate funding, and dispense its duties to donors.<sup>344</sup>

While an increase in funding and human resources would enable the Commission to address more petitions and cases in a timely manner, it is not the solution to all of the challenges faced by the Commission. The Commission may make several changes that do not require additional funding, but would enable the Commission to reallocate its existing resources more efficiently, and, consequently, increase the overall effectiveness of the organization.

The Clinic calls upon the Commission, in addition to requesting more targeted resources, to continue implementing a comprehensive strategy aimed at dealing with the current backlog that does not exclusively rely upon increasing staff to maintain current practices. Instead, the Commission may reorganize and utilize all of the skills of its existing staff. The Clinic contends that such a strategy is essential to managing the increasing backlog experienced by the Commission. Furthermore, in implementing this strategy, the Clinic suggests that the Commission continue, and build upon, the targeted goals outlined in the Strategic Plan.<sup>345</sup> While the Clinic is encouraged by the goals of the Strategic Plan, the Commission has a long way to go to actualize these self-imposed goals.

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Dulitzky, "50 Años del Sistema Interamericano de Derechos Humanos: Una Propuesta Reflexión sobre Cambios Estratégicos Necesarios," in *60 Años Después: Enseñanzas Pasadas y Desafíos Futuros*, edited by Gonzalo Aguilar Cavallo, 491-502, Santiago: Librotecnia, 2007; Ariel Dulitzky, "La OEA y los Derechos Humanos: nuevos perfiles para el Sistema Interamericano," in *Diálogo Político* 4, 69-108, Buenos Aires: Konrad-Adenauer-Stiftung A.C, 2008; and Ariel Dulitzky, "Reflexiones sobre la judicialización interamericana y propuesta de nuevos perfiles para el amparo interamericano," in *La Reforma del Proceso de Amparo: La Experiencia Comparada*, edited by Samuel B. Abad Yuparqui & Pablo Pérez Tremps, 327, Lima: Palestra, 2009.

<sup>342</sup> See Cavallaro & Brewer, *supra* note 87, at 783.

<sup>343</sup> Budget of the Strategic Plan, *supra* note 190.

<sup>344</sup> Strategic Plan Part II, *supra* note 111, at 28.

<sup>345</sup> See generally, Inter-Am. Comm'n H.R., *Strategic Plan 2011–2015, Executive Summary* (January 2011); Strategic Plan Part I, *supra* note 58; Strategic Plan Part II, *supra* note 111.

## B. Internal Changes

### 1. Performance Management

With the right attitude towards performance management, the Commission can use the performance results to become more efficient and more effective. The Commission has recently announced plans to create a performance management scheme for the years 2011-2015.<sup>346</sup> The Commission plans to emphasize consistency in draft reports and create methods for staff to use their time efficiently and effectively.<sup>347</sup> The OAS has just reviewed the results of its pilot Personnel Evaluation System, and after further review, has established a Performance Evaluation Review Committee to periodically review the effectiveness of this system, and suggest improvements henceforth.<sup>348</sup> The Clinic commends the Commission for taking advantage of these opportunities for more transparency and more efficiency in the system. The Clinic proposes that the Registry's performance management scheme can serve as a model for performance management throughout the Commission. For example, the Commission informed the Clinic that the average time that a review of a new petition takes is 25 months.<sup>349</sup> Such performance measurements should lead to the Commission to develop an internal consensus on what constitutes a reasonable time to process a petition or case through the different stages so that time standards can be developed to determine what constitutes improvement in the Commission's effort to combat delay.<sup>350</sup>

Beyond identifying delays in the process, the Commission can use performance measurement and management to determine where it needs to add more resources, help its employees understand their goals, and learn more about its own strengths and weaknesses. The Commission can ensure efficient distribution of attorneys between steps in the process. The lawyers of the Commission can also understand their own practices better. For example, based on her target time for a single petition, a staffer would know if she has spent more than the average amount of time and use that knowledge to determine whether the petition is unusual or whether she is just simply spending too much time on one petition. Moreover, the Commission can examine the practices of particular regional units that may be more efficient than other units and try to replicate those practices throughout.

The Commission should also use performance management to evaluate its effectiveness. For example, the National Center on State Courts suggests that the performance measurement of a court include ratings of users on accessibility, fairness, equality, and respect.<sup>351</sup> The Center established CourTools for all courts to use in measuring performance.<sup>352</sup> The first measure

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<sup>346</sup> Strategic Plan Part II, *supra* note 112 at 4-5.

<sup>347</sup> *Id.*

<sup>348</sup> "Summary of the Activities of the Staff Committee: July – September 2011," Staff Committee of the OAS Staff Association, 4 Oct. 2011, available at [http://www.staff.oas.org/documents/News%2011\\_12/SN16\\_1112%20ENG.htm](http://www.staff.oas.org/documents/News%2011_12/SN16_1112%20ENG.htm).

<sup>349</sup> Commission's Answers, *supra* note 9, at 9.

<sup>350</sup> See also OAS Working Group, *supra* note 62 at 24, (recommending the Commission to adopt at least an indicative timeframe for each of the stages of the procedure).

<sup>351</sup> OSTROM & HANSON, *supra* note 222, at 46.

<sup>352</sup> Trial Court Performance Measures, National Center for State Courts, available at [http://www.ncsconline.org/D\\_Research/CourTools/Images/courtools\\_measure1.pdf](http://www.ncsconline.org/D_Research/CourTools/Images/courtools_measure1.pdf).

relates to access, which is measured in a very literal sense (e.g. finding the courthouse, safety and concern for the person during the trial, reasonable amount of time in trial, website for courtroom, and any physical barriers or language barriers to the services the courthouse provides). Next, the Center finds that fairness is best measured more subjectively (e.g. did the judge listen to all sides of the story before rendering a decision? Was the petitioner treated like every other person? Was the petitioner given options in what to do next for his or her case?). Finally, the Center asks the petitioner to subjectively think about if as a person, and as a whole, he felt as though he was treated with the utmost respect. These standards are measured by a survey that is given to petitioners in evaluating their individual experiences with that particular Court. In addition to the above stated benefits, performance evaluations would help the Commission make a stronger case to the OAS and donors for more resources because the Commission will be able to describe exactly where the money would go and how the additional funding has impacted specific goals. Like the USCIS, it would also increase accountability amongst staff members, and give more political capital and weight to the Commission.

There may be some concern within the Commission that implementing performance measurement and management will affect the culture and goals of the Commission. However, this is not necessarily so. Performance measurement and management is not always about individual actors or transforming the workplace into a mechanical environment. In fact, the use of flexible targets, rather than hard-and-fast goals could be an example of use of performance measurement and management within the Commission. The key is to use the performance measurement and management results as tools for problem solving.

On the other hand, there may be some inevitable sacrifices associated with the implementation of a performance measurement and management system. First, such a system could impact the culture of an organization such as the Commission. Despite this potential consequence, the Clinic still recommends a performance management system. The experience in the Registry has shown that such a system could be effectively integrated with the Commission's culture. Furthermore, perhaps a change in culture is needed if backlog and delays are embedded in that culture.

A second potential shortcoming to avoid is that the staffers and lawyers at the Commission may be tempted or even required to sacrifice higher quality to improve their numbers. Here, the Clinic believes that a strong leadership with clear goals in mind is required. The management team and the Commissioners must not let the performance measurements based on numbers diminish the quality of the report. The management team and the Commissioners should emphasize that the Commission's effectiveness strongly relies on the persuasiveness of its decisions. At the same time, the Commission and its Executive Secretariat should find the proper balance between an intended goal of perfection and the need to dispense cases in a timely manner.

With the use of the PCMS and the DMS, the Commission already has some of the tools necessary for performance measurement and management, especially considering the fact that all "Officers responsible for matters within the individual petition system [currently] use the PCMS and the DMS."<sup>353</sup> The user metadata from the database tracks how many cases each professional

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<sup>353</sup> Commission's Answers, *supra* note 9 at 22.

in the Commission deals with each week. This level of metadata could give the Commission enough information to determine the average time for disposition for cases at a particular phase. Because each member of a Regional Section is assigned either admissibility phase cases or merits phase cases, the average time can be used to measure the performance of all the professionals.

## **2. Integration of the so-called “Registry” to approach the Rest of the Commission**

While the creation and expansion of the so-called “Registry” has significantly contributed to the system’s efficiency, the Clinic recommends that its model become more clearly incorporated within the Commission, in order to further aid the Commission’s effectiveness and efficiency. The backlog and the delays do not affect only new petitions, but rather, they appear throughout the process of the Commission. As a result, the Commission should sustain the resources allocated to the Registry throughout the Executive Secretariat<sup>354</sup> and expand the Registry’s methodological approach, based on performance measurement, to the rest of the areas of the processing of petitions and cases. Particularly, and considering the successful record of the “Registry” and the ambitious goals set up in the Strategic Plan, the bottlenecks and backlog will be transferred and will increase in the admissibility and merits stages as more petitions are reviewed or declared admissible. In any case, the Clinic believes that the chronological criterion should be neither the only, nor the determining, factor to decide the order in which cases and petitions are evaluated. It does not allow the IACHR to have the necessary flexibility for a quasi-judicial organization with multiple functions, nor does it allow for a strategic vision on the variety of impacts that different cases and petitions produce or could produce. Finally, the Clinic is aware of the differences between the “Registry” that only processes new petitions and the regional units where attorneys have many responsibilities in addition to the processing and resolution of cases and petitions.

Finally, the Clinic recommends that the term “Registry” be changed to “New Petitions Unit” or something similar. Removing the label of Registry and incorporating the group within the Executive Secretariat will make for a more clear identification of tasks performed by the Executive Secretariat. This change will signal that the Commission wants to adapt to the needs of the petitioners and has taken a strong stance against any unneeded inefficiencies and confusion.

## **3. Technology**

The staff at the Commission must continue to fully embrace technology that can be used as a tool for optimizing the process and diverting resources to other parts of a process—including both the Petition and Case Management System (PCMS) and Document Management System (DMS).<sup>355</sup>

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<sup>354</sup> The Clinic acknowledges that this would require general funds, rather than the specifically allocated funds given to the Registry. The Commission should highlight such goals when targeting funds.

<sup>355</sup> See *supra* Sections III(E) for more detailed discussions.

**a. Active promotion of full use of technology**

The Clinic is encouraged by the Commission’s full utilization of both PCMS and DMS.<sup>356</sup> However, leadership in the Commission should make a more proactive effort in embracing and promoting new and more technological changes. It should listen carefully to the reactions and concerns raised by the professional and administrative staff regarding the functioning of the DMS and PCMS and deal quickly and thoughtfully with those reactions.

**b. Training**

It has been stated to the Clinic that “[a]ll regular business within the Individual Petition System is carried out within these information systems,” but it has not been stated to what degree the staff is permanently trained on these systems.<sup>357</sup> There are many advantages to training the staff on the databases. First, this ensures that the users use the system properly. In a shared database, an erroneous change from one user can have far-reaching impact. By continuously training the staff members, they can properly learn how to use the database. By highlighting the improvement to the processes, staff members will be more cognizant of why the Commission has made the change and what benefits the new databases have. Finally, by helping the staff members understand the functions and potential of the technology, the staff members are in a position to suggest changes and improvement to the process. Because leadership does not always know the specific jobs of all the staff members, it may not be able to design a technological system that is optimal. If the staff members learn about the systems and embrace them, they will be in the best position to propose changes and improvements to them.

**c. Expansion of databases and public access to them**

The Commission has instituted a program called PPP that digitalizes communications from individual petitioners and States, so that they may “check the status of their matters via the Internet.”<sup>358</sup> However, the Commission does not have a program that digitizes older petitions/cases and includes them in the DMS. According to the Commission, only current petitions are digitalized, but nothing before 2007.<sup>359</sup> The Commission needs to digitally process petitions/cases that are older but still working their way through the Commission’s procedure. This will enable them to have a more complete view of its case system and more easily compare substantive and procedural features of petitions/cases.

Finally, if the system allows for it, PCMS could be able to help the Commission by grouping petitions and cases that have the same or similar fact patterns so that the Commission may be able to combine petitions and cases more readily. The PCMS tracks the process of all the petitions and cases pending in the Commission. Within the PCMS, the Commission currently tracks the type of case that it is dealing with—e.g. torture, deprivation of liberty, forced disappearances, etc. Using this data, the Commission should check all the pending petitions and

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<sup>356</sup> According to the Commission’s Answers, *supra* note 9 at 22, “[a]ll Officers responsible for matters within the individual petition system use the PCMS and the DMS.”

<sup>357</sup> *Id.*

<sup>358</sup> *Id.*

<sup>359</sup> *Id.*

cases against every new petition to see if any of them could be combined with the new petition. The Commission should go even further by adding additional items of data to the PCMS database. With more data on the petitions and the cases, the PCMS could automatically suggest cases and petitions for a new petition to be combined with.

The databases of the IACHR should be made publicly available. The parties to the petition and cases should be able to track the status of their petition or case. Parties also should be able to submit additional information and documents online.

#### **4. Petitions Intake System**

The Commission should reform the way it receives and registers petitions. As a result, the Executive Secretariat may handle all the petitions it receives with fewer resources so that some resources may be moved to other parts of the Commission. Specifically, the Commission should take steps to increase the number of petitions submitted online without duplicate submissions and reduce the number of unacceptable petitions. This will streamline the initial review process in the Executive Secretariat, which establishes the pace at which the petitions enter the Commission's system and dictates the backlog for the Commission.

The Commission should encourage the wide use of its online petition system. The Commission should also publish the Rules within the online petition system with an explanatory note showing clear examples of cases which cannot be processed. With the additional use of the online petitions system, the Commission can take advantage of the website traffic and explicitly publish the standards for whether a petition would be receivable or not. The Commission could provide an explanatory note providing clear examples of situations which are not processible in the form of Frequently Asked Questions. By being very explicit with these standards and examples and transmitted in a very simplified and user-friendly manner, the number of unacceptable petitions will hopefully be reduced and the transparency of the Commission's standards increased.

#### **5. Reduction of Duplication**

The Commission has taken steps to eliminate duplicative steps in its process. These changes are small changes, but over the course of a day, a week, they can add up. The less time spent on duplicative matters, the more time the Commission can spend on processing cases. The Clinic commends the progress stated by the Commission in its dialogue with the Commission that States are no longer notified by duplicate methods. As of mid-2011 States are notified by one method only, and petitioners are notified by email and by other methods only in the absence of email. The Clinic supports these efforts to reduce duplication in this regard.<sup>360</sup> However, it is unclear with regards to the admissibility and merits stage exactly what process has been conducted to 'rationalize all communications with States and petitions'. The Clinic urges the Commission to avoid duplicate and wasted efforts within the User Portal.<sup>361</sup>

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<sup>360</sup> Commission's Answers, *supra* note 9, at 1

<sup>361</sup> Commission's Answers, *supra* note 9, at 1.

## **C. New or Revamped Practices that May Require Rules of Procedure Changes**

### **1. Combined Commission Decision**

The Clinic recommends that the Commission amend its Rules and combine the admissibility and merits decisions into one. The Clinic's data suggests that the separation of the admissibility and merits decisions did not bring more clarity to admissibility requirements and actually slowed, rather than quickened, the pace of adjudication. The implementation of this recommendation, above all others, would notably reduce the backlog and delay. The results of other adjudication systems—particularly the Inter-American Court of Human Rights—suggest that this change will be effective in reducing backlog and duplication. The Clinic understands that many States and other actors may object to this change. In fact, the OAS Working Group recommended exactly the opposite asking the Commission to define objective criteria for the combining of the admissibility and merits stages.<sup>362</sup> However, the credibility and legitimacy of the Commission has been built—and continues to rely—on its determination to create a system that responds to the needs of the victims. One of the principle demands of the victims is to have their complaints fully decided in a timely manner.

### **2. Consistent Application of the Rules to Speed Up the Process**

The Commission should more frequently apply all the Rules that allow it to speed up the process. One of such Rules is Article 36.4 that allows the Commission to join the admissibility and merits decisions in exceptional circumstances. That provision has an enormous potential to help the Commission to reduce its backlog and speed up the process by combining decisions in a single report rather than drafting two separate ones. So far, the Commission has applied the rule inconsistently. According to sources, in the past, the Commission would apply such a rule in all petitions that were opened before the 2000 amendments, and had been in the Commission for at least five years. Furthermore, the Commission applied the same rule when the State did not respond to a petition. It is the understanding of the Clinic that regrettably such practices have been abandoned in recent years. The Commission should be much more proactive in applying the procedural tools at its disposal to reduce the length of the petitions. At the same time, the Commission should be much more explicit in explaining the different uses of procedural rules for cases or petitions in the same situation. Thus, when the Commission declines to use a procedural resource like the rule in Article 36.4 it should be clear why the Commission chose to forego that time-saving route. The Commission needs to utilize these opportunities within the Rules and in a more consistent way. Of course, the Clinic is aware that the combination of admissibility and merits decisions will not completely reduce the delay since the Commission will have to decide them at some point.

The Commission should more consistently continue to using Article 29.d and joining petitions when two or more complaints address similar facts, involve the same persons, or reveal the same pattern of conduct. So far, the possibility of accumulating petitions has not been applied

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<sup>362</sup> See OAS Working Group, *supra* note 62 at 12, 3.d.

by the Commission systematically.<sup>363</sup> The IACHR needs to continuously revise its docket in order to determine the potential application of this article as soon as possible.

Finally, while preserving the necessary flexibility of its procedure, the Commission needs to be stricter in the application of its deadlines and possibility of granting extensions. Articles 30.4 and 37.2 require that any request for extensions should be “duly founded.” The Secretariat should make clear assessments of the reasons for granting extensions. As Articles 30.4 and 37.2 refer only to requests for extensions made by the States, the Commission needs to amend its Rules and practices to extend the requirement of dully founded requests to those formulated by petitioners.

### **3. Adoption of Admissibility Decisions and Preliminary Revision of Merits Reports by a Working Group**

If the Commission does not implement the Clinic’s recommendation to combine the admissibility and merits decisions, or even until such change comes into force, it should find an alternative means to mitigate that problem. The Clinic recommends that the Commission adopt admissibility decisions by a working group (composed of four members to establish a quorum) rather than by the plenary of the Commission. If the Commission adopts admissibility decisions by working group, the Commissioners may adopt the same amount of decisions in a shorter period of time, consequently freeing more time for the plenary to decide merits decisions. Moreover, working groups can meet when the Commission is not in session, leaving even more time for merits decisions during sessions. The Clinic notes however, that the Commission should not use this change merely to adopt more admissibility decisions, because that would just move the backlog to a later stage in the procedure. The other three Commissioners should form another working group to do an initial review of the merits reports in order to speed up their discussion in plenary. In this way the Commission should use these changes to shift its attention during session to merits decisions.

### **4. Commission’s Use of Per Curiam Decisions and Shortened Report Formats**

To address some of the issues identified in this Report, the Clinic recommends that the Commission review its Rules of Procedure to allow a speedier disposition of its cases. The Rules should explicitly allow the Commission to issue “per curiam” decisions in cases that are substantially similar to cases that have previously been decided. Such decisions will point to the past cases and could merely state that the facts and legal issues are the same, so that the case is decided in the same manner as the previous case. The Commission should delineate explicit criteria on which per curiam decisions can be based and should make those criteria and the process of identifying similar cases fully transparent to the public.

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<sup>363</sup> For instance, from the early 2000s, the Commission received dozens of petitions related to the process of confirmation of judges and prosecutors made by the *Consejo Nacional de la Magistratura* [National Judicial Council] (CNM) in Peru. Instead of joining all the petitions and processing them as a single one, the Commission had dealt with them individually adopting at least six friendly settlement reports (see Reports N° 107/05; 50/06; 109/06; 20/07; 20/08 and 22/11).



The Clinic recognizes that the Commission has used the per curiam tool in cases such as Fierro<sup>364</sup> and Thomas.<sup>365</sup> Recently, the Commission made an express reference to “the practice of adopting *per curiam* decisions” and declared two petitions inadmissible just in one paragraph by referring to a previously decided petition.<sup>366</sup> The Clinic encourages the Commission to continue its budding practice of using per curiam decisions.

The method of applying the same decision to previous cases without elaborating on the particularities of each case raises the concern that States and petitioners could try to amplify every difference between the cases in order to argue that the previous decisions do not apply to their petition or case. Similarly, cases that are more complex or involve more legal issues than those previously decided should be decided separately in order to advance standards in human rights law. When this scenario arises, the Commission must determine whether the case at bar is sufficiently similar or different from the previous case to warrant using a per curiam decision. Such a determination is not outside the ability of the Commissioners. A similar objection was raised in response to U.S. appeals courts separating cases into tracks that included oral argument or skipped the step, to which the following response was apt, “Of course courts must articulate and apply standards that guide them in differentiating among cases, but these tasks are not beyond the competence of courts that regularly set and apply standards.”<sup>367</sup>

Finally, in order to prepare more reports more quickly, the Clinic recommends that the Commission continues its efforts to reduce the length of its reports, especially admissibility reports. In cases where the State has not questioned the admissibility requirements, the decisions should be simple and extremely brief. The same should be true when debating issues that have already been consistently decided by the inter-American system.

## 5. Addressing Structural Issues

Related to the use of per curiam decisions, is the possibility of using pilot decisions similar to the pilot judgments of the European Court. Pilot decisions would be applicable to cases that are virtually the same.<sup>368</sup> Using one case to decide subsequent cases may address systematic problems with only one case having to go through the full decision-making process. This method will be most effective if the Commission implements a procedure so that once one decision is made, all pending cases involving the same issue are noted and immediately resolved using the per curiam decision. As mentioned supra, qualitative analysis software can identify current cases

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<sup>364</sup> César Fierro v. U.S., Case 11.331, Inter-Am. Comm’n H.R., Report No. 99/03 OEA/Ser.L/V/II.118, doc. 5 rev. 2 ¶37 (2003) (the Commission recalled a previous decision and decided to “adopt[...] for the purposes of this report its findings in the [previous case] and ... analyze Mr. Fierro’s circumstances in light of those findings).

<sup>365</sup> Douglas Christopher Thomas v. U.S., Case 12.240, Inter-Am. Comm’n H.R., Report N° 100/03, Case 12.240, OEA/Ser.L/V/II.118, doc. 5 rev.2 ¶¶39-41 (2003).

<sup>366</sup> Social Security Contributions of Retired and Civil Servants - Physicians Union of the Federal District v. Brazil, Petition 989/04, Inter-Am. Comm’n H.R., Report No. 133/09 ¶21(2009) available at <http://www.cidh.oas.org/annualrep/2009eng/Brazil989.04eng.htm>; Social Security Contributions of Retired and Pensioned Civil Servants - UNAFISCO, CONAMP, et al. v. Brazil, Petitions 1133/04 and 115-05, Inter-Am. Comm’n H.R., Report No. 134/09, ¶ 23 (2009) available at <http://www.cidh.oas.org/annualrep/2009eng/Brazil1133.04eng.htm>.

<sup>367</sup> Godbold, *supra* note 330, at 863.

<sup>368</sup> See e.g. *Kachel v. Poland*, no. 50425/99, Eur. Ct. H.R. and 175 other Bug River Applications, (Sept. 23, 2008) available at [www.echr.coe.int](http://www.echr.coe.int).

that involve similar facts and legal issues. With its current rules, the Commission can simplify its procedure by joining cases or petitions. Article 29.1.d of the Rules states that “if two or more petitions address similar facts, involve the same persons, or reveal the same pattern of conduct, they may be joined and processed together.”<sup>369</sup> While this provision allows for joining petitions that are in the same stage, it does not allow the Commission to deal with petitions and cases at different stages. It also does not provide for a clear mechanism establishing the effect of one decision on cases and petitions dealing with the “same pattern of conduct.”

The modifications to the Rules, if the Commission follows the European model, will create a procedure that operates when the Commission receives a significant number of petitions deriving from the same root cause. In those situations, the Commission may decide to select one or more of them for priority treatment. In dealing with the selected petition/case or petitions/cases, it will seek to achieve a solution that extends beyond the particular petition/case or petitions/cases so as to cover all similar cases raising the same issue.

The Commission may also want to consider the provision of pilot judgments implemented by the European Court that gives the option of “adjourning or ‘freezing’ the examination of all other related cases for a period of time.”<sup>370</sup> If the Commission adopts this model, it must set certain conditions. First, it should limit the “freeze” to a set period of time.<sup>371</sup> Second, it should also require the State to promptly act on the recommendations in the pilot judgment.<sup>372</sup> Third, it should continually keep petitioners information about the ongoing procedure.<sup>373</sup> Finally, the Commission should emphasize that it may resume examination of “frozen” cases at any time if the State fails to comply with the recommendations.<sup>374</sup> The Commission should include these pertinent provisions in its Rules. The use of pilot decisions should not be mandatory and instead should provide the Commission enough flexibility to decide when it is pertinent to apply that procedure and when the use of pilot decisions should not lead to an adjournment of cases. In order to create an incentive for the State to resolve the problem, the Rules need to establish a fast-track procedure for those “unfrozen” cases and a stronger presumption that all these “unfrozen” cases will be filed with the Court immediately (given that the State accepts the jurisdiction of the Tribunal).

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<sup>369</sup> Commission Rules of Procedure, *supra* note 6, art 29.1.d.

<sup>370</sup> Eur. Ct. H.R., The Pilot-Judgment Procedure, Information note issued by the Registrar ¶5 (2009), [http://www.echr.coe.int/NR/rdonlyres/DF4E8456-77B3-4E67-8944-B908143A7E2C/0/Information\\_Note\\_on\\_the\\_PJP\\_for\\_Website.pdf](http://www.echr.coe.int/NR/rdonlyres/DF4E8456-77B3-4E67-8944-B908143A7E2C/0/Information_Note_on_the_PJP_for_Website.pdf)

<sup>371</sup> *See id.*

<sup>372</sup> *See id.*

<sup>373</sup> *See id.*

<sup>374</sup> *See id.* This appears to be situation with the case of the dozens of petitions related to the process of confirmation of judges and prosecutors made by the *Consejo Nacional de la Magistratura* [National Judicial Council] (CNM) in Peru. The Commission understood the necessity of adopting an integral solution and in some instances had “call upon the State to find a comprehensive solution to the problem of judges not reconfirmed by the National Council of the Magistracy, and to request the State to submit to the Commission, within a period of one month counted from the date of notification of the instant report, a proposed comprehensive solution to the situation of all the prosecutors and magistrates who were not reconfirmed.” See Report No. 20/08, Petition 494-04, Romeo Edgardo Vargas Romero, Peru. The absence of a pilot judgment mechanism, the Commission’s reluctance to proceed with the accumulation of all the petitions and Peru’s lack of implementation of an integral remedy forced the Commission to spend time adopting at least six friendly settlement reports (see Reports N° 107/05; 50/06; 109/06; 20/07; 20/08 and 22/11).

## 6. Receipt of Information and Documents

The Commission should also revise its Rules to require petitioners and States to present all of their evidence and documents at an earlier stage in the process. Ideally, the Commission would have a combined decision on admissibility and the merits and then would require both the petitioners and States to submit all of their documents and information at an early stage. The Commission should amend its Rules to follow Articles 35(1), 36(1), 40(2), and 41(1) of the Court's Rules of Procedure that require the parties to submit all the offered evidence in their initial submissions. With this rule, the Commission also would not request additional observations after the receipt of the initial observations. Article 57 of the Court Rules provide only very limited exceptions: only when the evidence was omitted "due to *force majeure* or serious impediment" or it "refers to an event which occurred after the procedural moments indicated."<sup>375</sup> The Commission should follow the tribunal's approach in this regard as well.<sup>376</sup>

Such a rule would encourage the parties to present all of their evidence right away, allowing the Commission to begin deliberations sooner, and also allowing both parties to see the strengths and weaknesses of their cases and determine the desirability of friendly settlement. This change prevents the potential duplication or waste of efforts associated with every new piece of evidence presented after the initial review. The Clinic believes that the Commission can implement this rule without sacrificing its fact-finding ability and cooperation if the rule is transparent and emphasized to the parties ahead of time. Third, and most important, the strict deadline for the receipt of evidence and information will not be effective if the rest of the Commission's functions are not sped up. If the Commission receives evidence at an early stage, but is too busy with other cases to look at that evidence, then the early receipt of information will not have had any effect on the overall time of the case. Thus, the Commission should implement this recommendation in conjunction with the other recommendations outlined in this report.

## 7. Friendly Settlement

The Commission should continue to make friendly settlement a high priority in its mission. The Clinic commends the Commission for creating a specialized unit on friendly settlements, the Friendly Settlement Group. The Clinic has several recommendations regarding the functioning of this group. The first step is to clearly identify how many cases are in the friendly settlement. According to the Commission's answers, the IACHR has a rough estimate (between 80 and 100), but from an efficiency point of view, the Commission should make concentrated efforts to assess its statistics in this area. In addition to drafting reports on cases that are already in the friendly settlement process, the Friendly Settlement Group should identify cases that are more likely to settle and encourage the parties to attend mediation sessions and find a resolution.

Additionally, the Friendly Settlement Group should present itself to parties and offer friendly settlement early in the procedure. The Rules of Procedure allow the Commission to

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<sup>375</sup> Court Rules of Procedure, *supra* note 141, Art. 57.

<sup>376</sup> The Clinic believes that in order to encourage proper submission of evidence at the early stages, the Court also should amend its practices and Rules in order to preclude parties from submitting evidence to the Tribunal that was not first offered and produced with the Commission.

make itself available to parties at any point during the processing of a case.<sup>377</sup> The Friendly Settlement Group should take advantage of this prerogative at the beginning stages of the processing of a petition, such as after the initial review when the Commission first requests observations from the parties. Encouraging friendly settlement earlier in the process can eliminate later stages and allow the Commission to allocate that time to resolve other cases.

Friendly settlement can also be a tool that addresses structural problems or recurring issues. The Friendly Settlement Group should also encourage friendly settlement to dispose of groups of similar cases. The Commission needs to identify cases that are more likely to settle and that involve similar facts and legal issues. These cases can then be grouped together for mediation proceedings. Mediators can then deal with the entire group of petitioners and the State to find a remedy for all of the parties.

One impediment to group resolution might occur if a petitioner refuses to agree to a settlement that all other petitioners in the group agree on. According to Article 49, in order for the Commission to approve friendly settlements, it needs a determination that the settlement is compatible with the American Convention of Human Rights. Furthermore, there is an understanding that the State is acting in good faith, and willing to resolve the matter before them. Publishing a report, and not referring to the Court, could provide a remedy to those who didn't settle. To avoid this scenario the Commission may need to have a presumption where there are holdouts to group settlements—i.e. one or two petitioners do not agree to the settlement, but a large number of petitioners do agree—there is a strong assumption that the unsettled petitions will not be referred to the Court. Publishing a report, and not referring to the Court, could provide a remedy to those who did not settle. With this presumption, petitioners would be discouraged from being obstinate or arbitrarily avoiding settlement. The Commission would have to decide what ratio of holdouts to petitioners in agreement is necessary for such a presumption when writing the rule. Further, the rule would only involve a presumption that the case would not be referred to the Court. That way, if the petitioner had a strong reason for not agreeing to the settlement, the Commission could still consider that to overcome the presumption and refer the case to the Court.

New rules also should specify the effects of noncompliance with friendly settlement. Currently, it appears that once the Commission adopts an Article 49 report approving a friendly settlement there is no possibility to continue with the petition or case provided that the State does not comply with the agreement. This situation may lead to many petitioners to refuse to sign agreements given the possibility of State noncompliance.

To further encourage friendly settlements, the Commission should have more on-site and working visits to States and should emphasize friendly settlement in these visits. Commissioners can hold mediation sessions during the on-site and working visits to resolve issues between petitioners and the State. Additionally, Commissioners should use diplomatic means during on-site visits to encourage States to be more open to friendly settlements.

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<sup>377</sup>Commission Rules of Procedure, *supra* note 6, Art. 40.1.

## 8. Transparency and Criteria for Decisions

The Clinic recognizes that the IACHR has adopted in the last decade several initiatives to provide more information on its work and clear criteria for the type of decisions that it adopts. Nevertheless there is still room for more improvements. Greater transparency is required for a more effective and efficient Commission in dealing with its backlog and delays. The Commission can increase support from all the involved actors if it publicizes more information, specifically, information on the way it handles petitions and cases and when they are disposed. For example, the Clinic asked the Commission to provide answers to how many cases are awaiting Articles 50, and 51 reports? The Commission's response was simply to say that the "Commission does not currently gather the statistics requested."<sup>378</sup> It would greatly contribute to the Commission's legitimacy to gather and publish this type of information. From an effectiveness perspective, the Commission could utilize these numbers to increase planning and effective management. Furthermore, the Commission should publicize its rationale when it applies time-saving rules and should disseminate criteria for which petitions may receive priority designation.<sup>379</sup> Making more information available to the public will increase both support and public accountability. The Commission could learn from USCIS' website, and the sheer amount of information available to the public on it.

## 9. Follow-up Measures

The Clinic commends the Commission's concrete goals regarding follow-up measures, and it encourages the Commission to further strengthen this commitment by making follow-up measures mandatory rather than discretionary, increasing on-site visits, and drafting more specific criteria for compliance in merits decisions. The Clinic believes that there is a clear correlation between full implementation of the decisions and reduction of the backlog. If States follow the Commission's recommendations in individual cases, there will be a positive impact in similar cases that could be solved by friendly settlements, shorter reports, or even withdrawal from the case docket of the Commission or avoidance of its filing altogether. This is particularly important in areas that involve preventive measures, training, and structural changes that might prevent future abuses.

The Clinic strongly recommends that Article 48.1 of the Rules be amended to make the adoption of follow up measures mandatory and not discretionary. The Commission should follow-up more closely and actively on cases by making detailed assessments on the status of each recommendation issued by the Commission.

On-site visits and, particularly, working visits are specifically appropriate to conduct follow-up measures. Thus, the Commission should increase its visits to countries on a more regular basis and should fully utilize these on-site and working visits to promote compliance with recommendations and prevention of future abuses. The Commission should strengthen its goals in this respect by providing more targeted country visits and recommending that the agenda for each on-site and working visit include the following:

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<sup>378</sup> Commission's Answers, *supra* note 9, at 16.

<sup>379</sup> See OAS Working Group, *supra* note 62, at 13, 3.h.

1. Meetings with representatives of the petitioners and States to discuss the measures taken to prevent or remedy abuses, in accordance with the Commission's and Court's decisions.
2. Meetings with central State officers with decision-making power and responsibility to implement key recommendations.
3. Issuance of a public statement, before the visit, indicating the status of each case to be discussed with the parties and a public statement at the end stating the commitments assumed by the States to implement the recommendations, if any.

During each visit, the Commission should bring to the attention of the authorities not only those cases with merits decisions or friendly settlement or Court judgments, but also other similar pending cases to address structural problems.

In order to facilitate implementation and secure proper follow-up, the Commission should avoid vague language that merely indicates that States should "adopt necessary measures."<sup>380</sup> The Commission should specify what sorts of measures would be sufficient. Additionally, the Commission should create, and make public, clear criteria to evaluate whether, and to what degree, a recommendation has been complied with. In its review of the status of compliance with its decisions, the Commission should provide more clear information explaining what constitutes full and partial compliance.<sup>381</sup> When the Commission follows up with States and petitioners, it can then use the precision of the initial recommendations, along with the set criteria to evaluate the level of compliance and determine what steps still need to be taken.

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<sup>380</sup> See e.g. Report No. 79/11, Case 10.916, James Zapata Valencia and José Heriberto Ramírez (*stating that Colombia must "adopt the necessary measures to ensure a due investigation into the cases of the executions perpetrated by State security agents*).

<sup>381</sup> The same recommendation has been put forth regarding the Court's decisions. Basch, *supra* note 193, at 32.

## VII. Conclusion

When the Clinic began its process of preparing this report in 2010, there was no Strategic Plan and much of the information was not publicly available. The Clinic is encouraged by the new developments in the Strategic Plan, and by the Commission's openness and willingness to engage in a dialogue with the Clinic. In keeping in mind the larger goal of access to justice, the Clinic feels it is imperative that the recommendations here that would help the Commission reduce its backlog and become more efficient, should be implemented. The Clinic is encouraged by how many changes are already in place, but feels that more can be done.

It is vital that the Commission take action soon. The Commission is at a crucial time where it must decide to radicalize and change its current procedures and face the prospect of failing the people it serves. The Clinic commends the Commission for already pre-emptively taking some steps necessary to address its structural deficiencies, but the Clinic notes that there is also room for improvement. The case of Gerson Jairzinho González Arroyo, in which it took the Commission seventeen years to issue a decision on admissibility, was simply one case in which the Commission implicitly acknowledged that its own delay was an unwarranted delay. There are numerous other cases where this could be said, and if the Commission wants to truly address these concerns, it must adopt at least some of the recommendations laid out in this report, and sincerely consider combining some admissibility and merits decisions. As the Courts of Botswana opined, "In an ever changing world, law and the machinery of justice must adapt to changing circumstances if they are to fulfill their role in society."<sup>382</sup>

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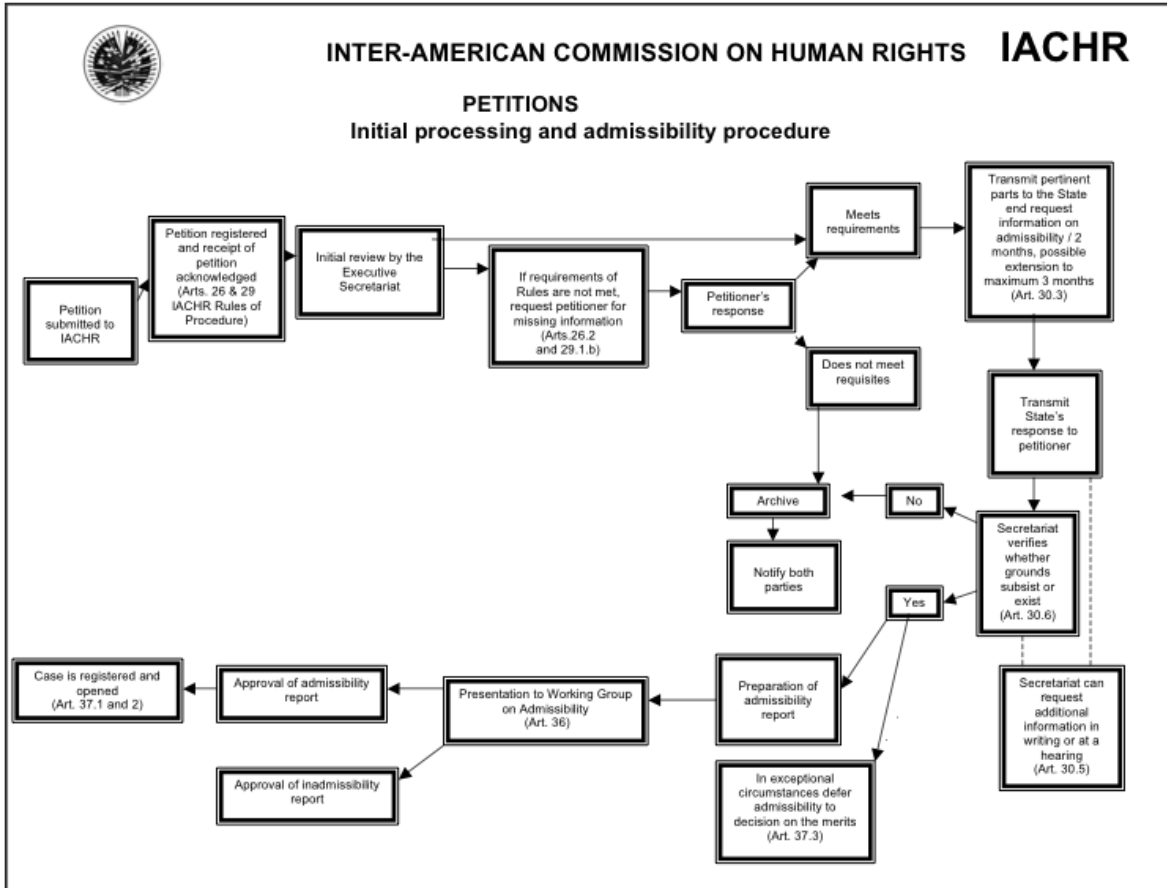
<sup>382</sup> GN.NTHOMIWA, "Presentation on Case Flow Management System: An Efficient and Transparent Means to Deliver Justice," SAJC/Venice Commission Registrar's Workshop. Dec. 5-7, 2007, Johannesburg, South Africa, quoting the Courts of Botswana in a speech given for the opening of the legal year in 2002.



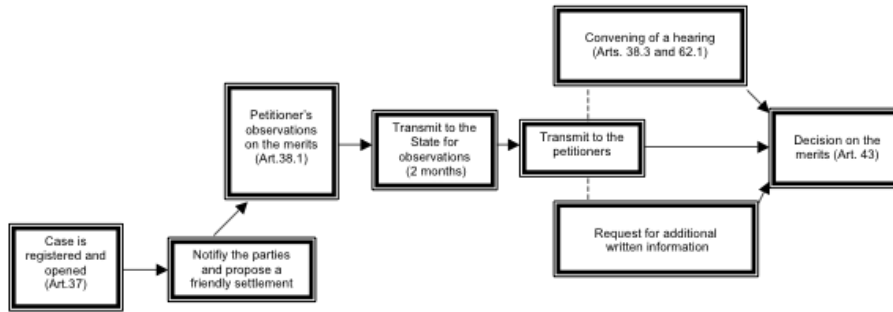


VIII. Appendix

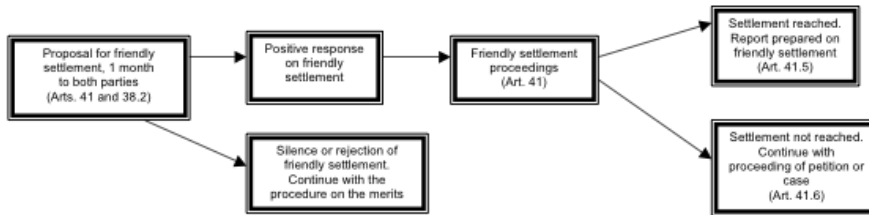
Appendix I: 2001 Commission Procedure Flowcharts



**CASES**  
**Procedure on the merits**



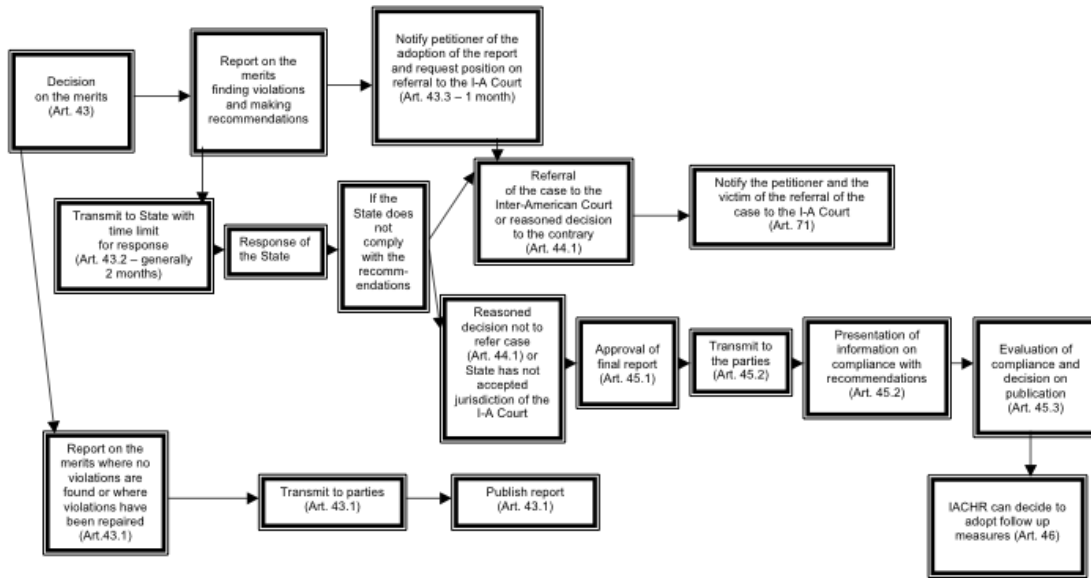
**Friendly settlement procedure \***



\* Article 41. 1: On its own initiative or at the request of any of the parties, the Commission shall place itself at the disposal of the parties concerned, at any stage of the examination of a petition or case, with a view to reaching a friendly settlement of the matter on the basis of respect for the human rights recognized in the American Convention on Human Rights, the American Declaration, and other applicable instruments.

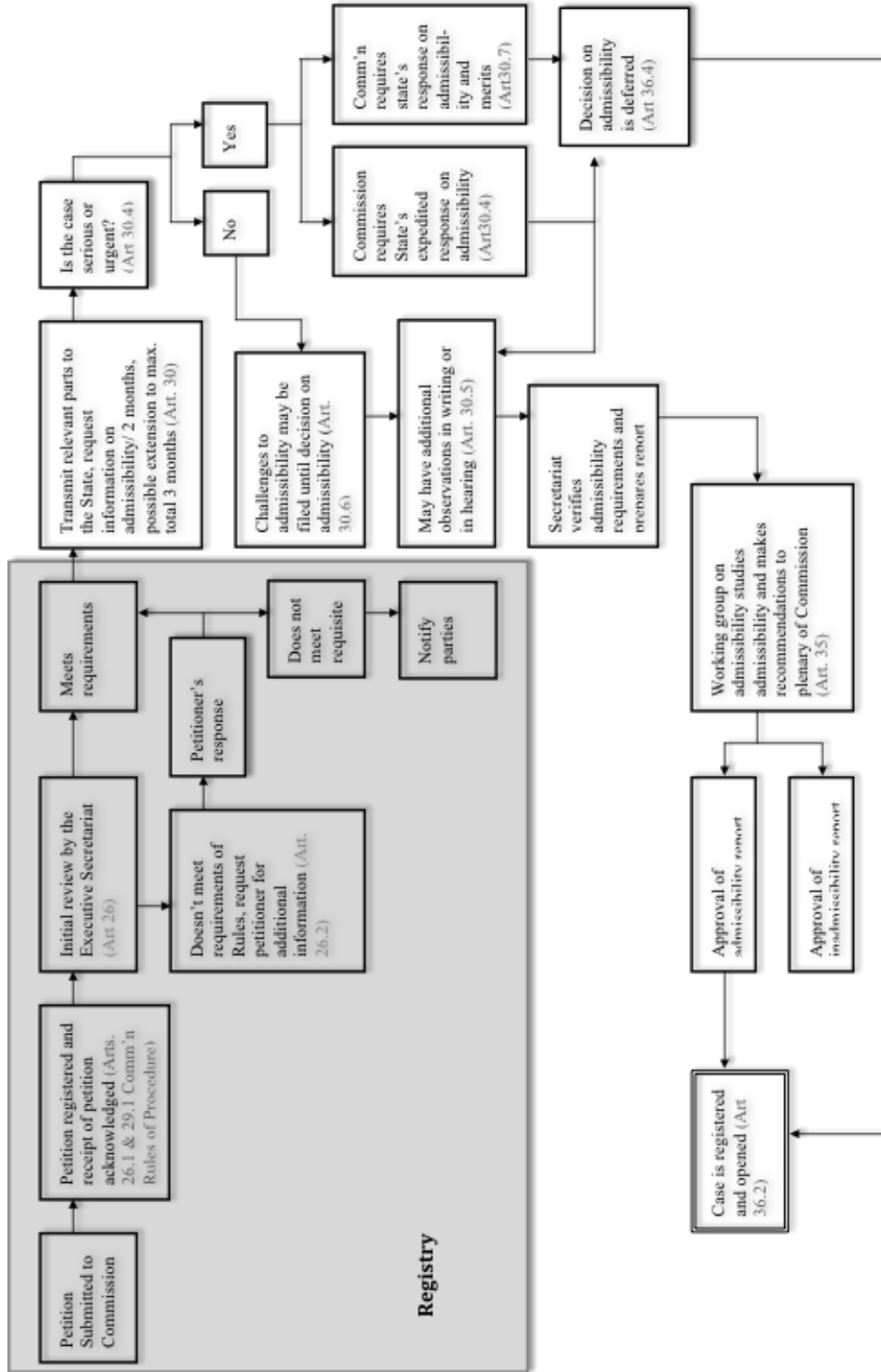
Article 38. 2: Prior to making its decision on the merits of the case, the Commission shall set a time period for the parties to express whether they have an interest in initiating the friendly settlement procedure provided for in Article 41 of these Rules of Procedure. The Commission may also invite the parties to submit additional observations in writing.

### Decision on the merits / Referral of case to the Inter-American Court



Appendix II: Current Commission Procedure Flowcharts

Inter-American Commission on Human Rights Initial Processing and Admissibility Procedure



## Inter-American Commission on Human Rights Merits and Friendly Settlement Procedure

