



CORTE INTERAMERICANA DE DERECHOS HUMANOS
COUR INTERAMERICAINE DES DROITS DE L'HOMME
CÔRTE INTERAMERICANA DE DIREITOS HUMANOS
INTER-AMERICAN COURT OF HUMAN RIGHTS



Statement of Motives for the Reform of the Rules of Procedure

The Inter-American Court of Human Rights (hereinafter, "the Court," "the Inter-American Court," or "the Tribunal") presents its new Rules of Procedure, the product of constructive, participatory, and transparent communication with the different actors and users of the Inter-American System for the promotion and protection of human rights (hereinafter, "the Inter-American System" or "the System") that participated in the Court's call for observations.

These new Rules of Procedure are the result of a second phase of dialogue and reflection initiated by the Inter-American Court some time ago with the different actors and users of the Inter-American System, which has been reflected in a process of consultation carried out through the convocation of all persons and institutions wishing to participate, using for that purpose various means of information and mechanisms accessible to all. In this phase, it is important to note the dialogue and coordination carried out with the Inter-American Commission on Human Rights (hereinafter, "the Commission" or the "Inter-American Commission").

In this second phase of the process of reflection, the Court consulted on the following topics:

1. Role of the Inter-American Commission on Human Rights in proceedings before the Court.
2. Common intervener in cases with multiple representatives of alleged victims.
3. Requests for provisional measures in contentious cases that are already before the Court and the requirement that they be directly related to the object of the case before the Court.
4. Elements that should be included in the brief containing pleadings, motions, and evidence.
5. Elements that should be included in the answer to the application.
6. Assessment of incomplete or illegible evidence.
7. Treatment of affidavits as evidence before the Court and the possibility of allowing the parties to submit a list of questions to those who render a statement in this manner.
8. Regulation of the practice of the Tribunal of requesting definitive lists of witnesses and expert witnesses as way of confirming evidence previously offered.
9. Grounds for disqualification of witnesses and expert witnesses.
10. Protection of all those who appear before the Court.

For that purpose, the Court initially established a period extending from May 13 to July 13, 2009, for the reception of observations from all interested parties. On June 24, 2009, this period was extended to August 13, 2009. In response, the following participants submitted observations:

- a. the Inter-American Commission;
- b. the States of Barbados, Bolivia, Brazil, Chile, Colombia, Costa Rica, El Salvador, Guatemala, Mexico, Peru, and Venezuela;
- c. various civil society organizations, to wit: the Center for Justice and International Law; a group of Colombian organizations made up of the *Comisión Colombiana de Juristas* (Colombian Commission of Jurists), the *Corporación Sisma Mujer* (Sisma Mujer Corporation), Minga, the *Grupo Interdisciplinario por los Derechos Humanos* (Interdisciplinary Group for Human Rights), the *Corporación Reiniciar* (Corporation Reinitiate), *Colectivo de Abogados "José Alvear Restrepo"* (José Alvear Restrepo Lawyers' Collective), and the *Comisión Intereclesial de Justicia y Paz* (Intereclesial Commission for Justice and Peace); a Group of Mexican organizations made up of the *Centro de Derechos Humanos Miguel Agustín Pro Juárez A.C* (Miguel Agustín Pro Juárez Human Rights Center, Civil Association), the *Comisión Mexicana de Defensa y Promoción de los Derechos Humanos* (Mexican Commission for the Defense and Promotion of Human Rights), *Asistencia Legal para los Derechos Humanos* (Legal Assistance for Human Rights), the *Centro de Derechos Humanos "Fray Francisco de Vitoria O.P" A.C* (Friar Francisco de Vitoria O.P. Center for Human Rights), the *Tlachinollan* Human Rights Center of the Montaña, and *Fundar, Centro de Análisis e Investigaciones* (FUNDAR Center for Analysis and Investigations); and
- d. two attorneys.

The primary reform of the new Rules of Procedure relates to the role of the Commission in proceedings before the Court. The different actors of the System that participated in this consultation referred to the expediency of modifying some aspects of the Commission's participation in proceedings before the Court, according greater prominence to litigation between respondent States and the representatives of victims or alleged victims, and thus allowing the Commission to play the role of organ of the Inter-American System and guaranteeing procedural equality between the parties.

Participants also agreed that proceedings before the Court should be initiated through the presentation of the report to which Article 50 of the Convention refers. Accordingly, in these Rules of Procedure, under Article 35, the Commission will no longer initiate proceedings through the submission of an application, but through the submission of its merits report issued in accordance with Article 50 of the Convention. Upon submission of that report, the Commission shall state why it has chosen to present a case to the Court. Additionally, unlike under the previous Rules of Procedure, the Commission may no longer offer witnesses or the statements of alleged victims; according to Article 35, it may only offer expert witnesses under certain circumstances. Furthermore, the Commission shall initiate public hearings in the cases in which they are held, stating why it has submitted the case to the Court. The representatives of alleged victims and the State may conduct interrogations. The Commission may interrogate expert witnesses in the situation provided for under

Article 52. At the closing of the stage in which oral arguments are presented, governed by Article 51(7), the Commission shall set out its final observations, as established in Article 51(8). It should be noted that this new procedure was considered in detail together with the Commission.

In accordance with Advisory Opinion OC-20/09 on Article 55 of the American Convention on Human Rights, the Court modified its Rules of Procedure in order to include a provision in Article 19 establishing that judges may not participate in the consideration and deliberation of an individual petition submitted to the Court when they are nationals of the respondent State, as well as a provision in Article 20 authorizing States to appoint judges *ad hoc* only in cases initiated through interstate communications.

In case there are alleged victims that do not have legal representation before the Court, the new Rules of Procedure, under Article 37, establish the figure of the Inter-American Defender, which the Court may appoint on its own motion to assume the representation of those victims in the proceedings. The "Legal Assistance Fund of the Inter-American System of Human Rights" shall complement the work of the Inter-American Defender. Under the previous rules of Procedure, the Commission assumed the representation of alleged victims that did not have legal representation. Through this reform, alleged victims will be guaranteed an attorney to represent their interests before the Court, and economic considerations will no longer impede access to legal representation. Additionally, this reform prevents the Commission from having to take on a dual role before the Court, both as a representative of victims and an organ of the System.

Upon its consideration of comments relating to the appointment of a common intervener in cases with multiple representatives of alleged victims or their family members, which underscored the difficulties that this practice generated for victims, the Court decided, in Article 25 of the Rules of Procedure, to authorize the representatives of alleged victims that do not reach an agreement as to the appointment of one common intervener in a case to appoint a maximum of three representatives to act as common interveners. Additionally, in order to ensure equality of arms between the parties, in such a case, said Article authorizes the Presidency of the Court to establish deadlines different from those established in the Rules of Procedure for the State to submit its answer, as well as the time limits for the participation of the State and the alleged victims or their representatives in public hearings.

In order to facilitate communication between the Court and the different actors that appear before it and to expedite proceedings, the reformed Rules of Procedure authorize the use of new technologies. Article 28 regulates the submission of briefs through electronic means, as the submission of hard copies is unnecessary if the electronic version is subscribed. Amicus curiae briefs submitted to the Court will be treated similarly, as established in Article 44. Additionally, Article 33 permits the Court to transmit documents and serve notice upon parties exclusively through electronic means. Finally, Article 51(11) authorizes the reception of statements through the use of electronic audio-visual means.

Articles 40 and 41, respectively, set out the elements that the brief containing pleadings, motions, and evidence and the State's answer must contain.

Furthermore, regulations were established regarding extemporaneous submissions of evidence (Article 57(2)), and submissions of incomplete or illegible evidence and the consequences thereof (Article 59). Likewise, regulations were established regarding grounds for disqualification of witnesses and expert witnesses (Articles 48 and 49), the offer, convocation, and appearance of declarants (Article 50), and the procedure during hearings before the Tribunal (Article 51).

With respect to statements offered through affidavits, the actors of the System signaled the importance of providing the possibility of questioning declarants offered by an opposing party in the Rules of Procedure. Accordingly, Article 50(5) of the Rules of Procedure permits the parties to submit written questions to those declarants. This new practice, which was not contemplated in the previous Rules of Procedure, facilitates the application of the adversarial principle with respect to evidence of this nature.

The Rules of Procedure incorporate various procedural practices of the Court, such as the request for a definitive list of witnesses (Article 46); the submission of final written arguments by alleged victims or their representatives and the respondent State, and final observations by the Commission (Article 56); and the joinder of provisional measures or proceedings for the monitoring of compliance with judgments when the requirements of Article 30 are met. The latter practices are aimed at strengthening the principles of efficiency and procedural economy.

Article 53 expands the protection of persons appearing before the Court to representatives or legal advisers of alleged victims as a consequence of their advocacy before the Court. The previous Rule of Procedure only referred to the protection of alleged victims, witnesses, and expert witnesses.

The new Rules of Procedure contain a provision that permits the Tribunal, on its own motion or at the request of any of the parties to the case, to rectify obvious mistakes, clerical errors, or errors in calculation in its judgments or orders, as established in Article 76.

Also, Article 27 indicates that when provisional measures are requested under the framework of a contentious case before the Court, that request must be related to the subject matter of the case.

Finally, unlike the previous Rules of Procedure, the new Rules regulate the submission of cases by States in accordance with Article 61 of the Convention.