

ARTICLE

The Historical and Present-Day Role of Non-Governmental Organisations before the Inter-American Human Rights System in Documenting Serious Human Rights Violations and Protecting Human Rights and the Rule of Law Through Ensuring Accountability

Clara Burbano Herrera* and Yves Haeck†

From a Latin-American perspective, even in a context where the rule of law has been under attack or has been very weak, the role of human rights NGOs has been and is very relevant in terms of documenting human rights violations, and seeking and bringing justice for the victims of those violations, as well as acting as a guardian angel to the Inter-American human rights system. The role of NGOs within the Inter-American human rights system has to be understood taking into account the specific political and the legal-normative context on the continent. Indeed, the role played by human rights NGOs in the Americas has responded/responds to the political reality of repressive regimes and present-day fragile democracies struggling to uphold human rights and rule of law standards. Furthermore, the legal-normative context, i.e. the American Convention on Human Rights and the interpretation given by the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights to its provisions, has also given and gives NGOs ample space to interact through different methods and strategies in a less active to a very active manner with the human rights monitoring bodies from 1959 on.

Keywords: NGOs; rule of law; human rights; Inter-American Human Rights System; Inter-American Commission on Human Rights; Inter-American Court of Human Rights

1. Introduction

The rule of law is a universal principle and a precondition for ensuring equal treatment before the law and for the defense of human rights¹ and has become 'a global ideal and aspiration.'² Ensuring respect for the rule of law is a primary responsibility of each state. Despite the recognition of this principle in Latin-American countries, discriminatory access to or abusive exercise of power undermining or denying the rule of law, such as systematic infringement of the independence of the judiciary or lack of subordination of state institutions to the legally constituted civilian authority, have been rife.³ In this complex and troubling context non-governmental organisations (NGOs) have had a significant role in

* Professor of international human rights law, Director Programme for Studies on Human Rights in Context, Human Rights Centre, Ghent University, BE, email: Clara.BurbanoHerrera@UGent.be.

† Professor of international human rights law and constitutional law, Director Programme for Studies on Human Rights in Context, Human Rights Centre, Ghent University, BE, email: Yves.Haeck@UGent.be.

¹ Council of Europe, Venice Commission. *The Rule of Law Checklist* (Adopted on 11–12 March 2016) 14.

² Ronald Janse, *Rule of Law. A Guide for Politicians* (HILL, Lund/The Hague 2012) 6.

³ E.g. Pilar Domingo and Rachel Sieder, *The Rule of Law in Latin America: The International Promotion of Judicial Reform*, University of London Institute of Latin American Studies, 2001; Rachel Sieder, Karina Ansolabehere and Tatiana Alfonso, *Routledge Handbook of Law and Society in Latin America* (Routledge 2019); John C Chasteen, *Born in Blood and Fire. A Concise History of Latin America* (Norton 2016).

Latin-America. When the rule of law and the basic rights of vulnerable persons have been under attack or have already been violated, NGOs have engaged in a number of activities at the domestic and regional level to pressurize state authorities to guarantee them. NGOs have played a fundamental role in seeking justice for the victims of human rights violations, but also in the promotion and the implementation of human rights. This contribution aims to analyse the role of human rights NGOs (HR NGOs) before the Inter-American Commission on Human Rights (IACHR, Inter-American Commission or Commission) and the Inter-American Court of Human Rights (IACtHR, Inter-American Court or Court), in particular when the rule of law has been violated in the region. In order to understand their role, it is relevant or pertinent to contextualise and therefore to analyse the HR NGOs' activities within the specific political and the legal context in the Americas, both in the past and present. While certain English literature has dealt with the link between human rights and civil society in Latin-America and/or the evolving role of HR civil society organisations in Latin-America in a broad perspective,⁴ this contribution aims to critically assess the more narrow interactions between HR NGOs with the monitoring bodies within the Inter-American human rights system (IAHRS), not only from a historical perspective, but also from a present-day perspective, thereby highlighting certain trends as to the evolving roles and functions of NGOs within the IAHRS, the ever-expanding dialogue, thereby complementing the scarce and somewhat succinct existing English literature on the topic.⁵

Since the IAHRS was created in 1948, the political context in the Americas has evolved from very repressive regimes in the form of dictatorships or countries plagued by internal armed conflicts, towards –‘fragile’– democracies.⁶ In this sense, the activities developed by NGOs and the manner how they have approached the inter-American monitoring bodies has clearly responded to this political reality. The legal context has also had an important impact in the way how NGOs have worked. As will be explained, the interpretation given by the Commission and the Court to the legal provisions in the inter-American instruments has given NGOs an important space to interact with both monitoring bodies. Additionally, the manner how the domestic legal context has evolved, especially through the transition towards democracies at the end of the 1980s, together with the adoption of new constitutions which gave a special and privileged treatment to fundamental rights and freedoms and international human rights treaties, has also had an important impact in the way how NGOs have worked at the international as well as the domestic level.⁷ As will be shown, NGOs have been very active and creative. They have taken advantage of this specific context in order to document human rights violations, bring justice to the victims of such violations, to promote human rights and to help embed the human rights standards developed by the Commission and the Court into the national legal system of Latin-American states, and act on occasions as a strong supporter and guardian angel of the inter-American human rights system.

The contribution will be divided in five parts: in the first part the notion of the rule of law and its relation to human rights at the regional level will be briefly explored (2). In the second part, a short historical background on the functioning of the IAHRS will set the stage (3) for the political context as well as the inter-American normative aspects, and the quintessential role NGOs have played before the IAHRS (4). We will end with some other domestic and regional activities developed by NGOs (5), as well as some final remarks (6).

⁴ E.g. the insightful articles/books of Martin Abregu, 'Human Rights for All: From the Struggle Against Authoritarianism to the Construction of an All-inclusive Democracy. A View for the Southern Cone and Andean Region' (2008) 8 Sur. International Journal of Human Rights, 7; Phillip L. Ray and J. Sherrod Taylor, 'The Role of Nongovernmental Organizations in Implementing Human Rights in Latin America' [1977] 7 Ga J Int'l & Comp L 477; Hugo Fröling, 'Introduction', in Hugo Fröling (ed), *Derechos Humanos y Democracia. La Contribucion de las Organizaciones no Gubernamentales* (IIDH 1991) 13 et seq; Diego Garcia-Sayan, 'Non-governmental Organizations and the Human Rights Movement in Latin America' [1992] 4 Transnational Associations 207; Commission on Global Governance, *Our Global Neighborhood: The Report of the Commission on Global Governance* (OUP 1995) 32; Henry Steiner, Philip Alston and Ryan Goodman (eds), *International Human Rights in Context: Law, Politics, Morals* (Clarendon Press 2008) 669–689.

⁵ In essence: Monica Pinto, 'NGOs and the Inter-American Court of Human Rights', in Tullio Treves et al., (eds), *Civil Society, International Courts and Compliance Bodies* (Asser Press 2005) 47–48; Heidi Nichols Haddad, 'Judicial Institution Builders: NGOs and International Human Rights Courts' (2021) 11 Journal of Human Rights 126; Ximena Soley, 'The Crucial Role of Human Rights NGOs in the Inter-American System' (2019) 113 AJIL Unbound.

⁶ Paul H. Lewis, *Authoritarian Regimes in Latin America: Dictators, Despots, and Tyrants* (Jaguar Books on Latin America) (Rowman & Littlefield 2006). Also, David Collier (ed), *The new authoritarianism in Latin America* (Princeton University Press 1979); David Altman and Anibal Pérez-Liñán, 'Assessing the Quality of Democracy: Freedom, Competitiveness and Participation in Eighteen Latin American Countries' [2002] 9/2 *Democratization* 85.

⁷ See e.g. Colombian Constitution, Art. 93; Bolivian Constitution, Arts. 13, IV and 256; Ecuadorian Constitution, Art. 424.

2. The Rule of Law from a regional Inter-American Human Rights Perspective

The concept of the rule of law as a fundamental principle and the need for universal adherence to and implementation of the rule of law has been recognised at the universal level by the United Nations,⁸ as well as at the regional level by the Organization of American States,⁹ the African Union,¹⁰ the European Union,¹¹ the Council of Europe,¹² and the Association of South-East Asian Nations.¹³ In short, the rule of law has been recognised as a concept of universal validity.¹⁴

While no agreement exists on a single definition of the rule of law, a 2004 report of the UN Secretary-General explicitly holds that it concerns 'a principle of governance in which all persons, institutions and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards' and that the rule of law 'requires (...) accountability to the law.'¹⁵ In the 2012 Declaration of the High-level Meeting of the General Assembly on the Rule of Law, UN states once again stressed the interrelationship between the rule of law and human rights.¹⁶ At the European level, according to the European Commission, under the rule of law '(...) all public powers always act within the constraints set out by law, in accordance with the values of democracy and fundamental rights, and under the control of independent and impartial courts.'¹⁷ It further stated that the rule of law includes 'principles such as legality, implying a transparent, accountable, democratic and pluralistic process for enacting laws; legal certainty; prohibiting the arbitrary exercise of executive power; effective judicial protection by independent and impartial courts, effective judicial review including respect for fundamental rights; separation of powers; and equality before the law.'¹⁸ The Council of Europe's Venice Commission, examining the notions of the principle of rule of law given by various authors coming from different systems of law, legal cultures as well as state organisations, concluded that 'despite differences of opinion, consensus exists on the core elements of the Rule of Law.' They are: '(l)egality, including a transparent, accountable and democratic process for enacting law; (l)egal certainty; (p)rohibition of arbitrariness; (a)ccess to justice before independent and impartial courts, including judicial review of administrative acts; (r)espect for human rights; and (n)on-discrimination and equality before the law.'¹⁹ In short, human rights and respect for human rights are often labelled as a fundamental aspect of the rule of law, or are sometimes even equated.

In the Americas, the key elements of the rule of law and the link between the rule of law, human rights, political rights and democracy, are enshrined in the 'Inter-American Democratic Charter,' which states:

[e]ssential elements of representative democracy include, inter alia, respect for human rights and fundamental freedoms, access to and the exercise of power in accordance with the rule of law,

⁸ UN General Assembly, 2005 World Summit Outcome. Resolution adopted by the General Assembly on 16 September 2005, Sixtieth session, <https://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A_RES_60_1.pdf>; United Nations, Declaration of the High-level Meeting of the General Assembly on the Rule of Law at the National and International Levels Resolution adopted by the General Assembly. Sixty-seventh session. Resolution 67/1, paras 1–2.

⁹ Organization of American States (OAS), Inter-American Democratic Charter adopted 11 September 2011, Art 2, 3, 4, <https://www.oas.org/charter/docs/why_charter.htm>.

¹⁰ African Union (AU), Constitutive Act of the African Union adopted 11 July 2000, Art 4, <https://au.int/sites/default/files/pages/34873-file-constitutiveact_en.pdf>.

¹¹ European Union (EU), Preamble and Articles 2 and 21, Consolidated Version of the Treaty on European Union [2008] OJ C115/13.

¹² Council of Europe (COE), Statute of the Council of Europe adopted 5 May 1949, Preamble and Art 3, <<https://rm.coe.int/1680306052>>.

¹³ Association of South-East Asian Nations (ASEAN), Asean Declaration (Bangkok Declaration) adopted 8 August 1967, Second, sub 2, <<https://asean.org/the-asean-declaration-bangkok-declaration-bangkok-8-august-1967>>.

¹⁴ COE Venice Commission *The Rule of Law Checklist*, (2016) 7 <https://www.venice.coe.int/images/SITE%20IMAGES/Publications/Rule_of_Law_Check_List.pdf>.

¹⁵ Report of the Secretary-General on the rule of law and transitional justice in conflict and post-conflict societies (S/2004/616), para 6.

¹⁶ UN Declaration of the High-level Meeting of the General Assembly on the Rule of Law at the National and International Levels Resolution adopted by the General Assembly, Sixty-seventh session, adopted by the Assembly in resolution 67/1, para 1.

¹⁷ European Commission, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, 2020 Rule of Law Report, the Rule of Law situation in the European Union 30 September 2020, 1, <https://ec.europa.eu/info/sites/info/files/communication_2020_rule_of_law_report_en.pdf>. See COM(2019) 163 'Further strengthening the rule of law in the Union: state of play and possible next steps' <<https://www.eesc.europa.eu/en/our-work/opinions-information-reports/opinions/further-strengthening-rule-law-within-union-state-play-and-possible-next-steps-communication>>. Also COM(2019) 343 'Strengthening the rule of law within the Union: a blueprint for action'.

¹⁸ *ibid*.

¹⁹ Venice Commission (n 14) 9–10.

the holding of periodic, free, and fair elections based on secret balloting and universal suffrage as an expression of the sovereignty of the people, the pluralistic system of political parties and organizations, and the separation of powers and independence of the branches of government.²⁰

Additionally, the Inter-American Commission has also reaffirmed that in a democratic society the rule of law and human rights are indivisible. The Commission has often referred to the rule of law, expressing its concern due to the critical political and social context in some OAS states, especially related to election processes that failed to reach the minimum standards of free and fair elections²¹ and the weakening of their democratic institutions.²² According to the Commission respect and guarantees for human rights are essential conditions for democracy and the rule of law.²³ Recently, the Commission also highlighted the importance of the rule of law to address restrictions of human rights during the complex Covid-19 situation.²⁴

While the statements and documents at the regional inter-American level recognise the importance of the rule of law, its intimate relationship to human rights, the commitment of the international community and states to protect this fundamental principle, and the necessity to hold states accountable in case they are trampled upon, unfortunately some Latin-American countries have persistently been plagued with dictators and/or authoritarian presidents, regimes where the judiciary and parliament have been their collaborators and where the principle of the rule of law and human rights have been under attack.²⁵

In that context the following section will provide the necessary historical background of how the inter-American system was created and operates, immediately followed by the analysis of the political and social context in the region. With the study of these latter aspects, the reader will be shown how and to what extent the rule of law in several Latin-American countries has been violated and how human rights NGOs have reacted and presently are reacting with the purpose to protect and preserve the rule of law by holding states accountable, and to bring justice to the victims of human rights violations.

3. A brief historical background of the inter-American human rights system

The IAHRs was created under the auspices of the Organization of American States (OAS) in 1948, with the adoption of the Charter of the Organization of American States (OAS Charter)²⁶ and the adoption of the American Declaration of the Rights and Duties of Man (Declaration).²⁷

The OAS Charter, the 1969 American Convention on Human Rights (ACHR) and the Statute of the Inter-American Commission provide that the Commission is an OAS organ created to promote the observance and defence of human rights.²⁸ The Commission interprets the ACHR, but also the Declaration. The Declaration is not a treaty, but it imposes indirectly obligations upon all 35 states, through their OAS membership. In 1959 the Commission was created through a political decision of the Ministers of Foreign Affairs of the American states. Because the Commission's mandate was to promote and protect human rights in the

²⁰ IACHR Alerts About Further Weakening of Rule of Law in Venezuela Ahead of New Presidential Mandate (Press release 9 January 2019) <http://www.oas.org/en/iachr/media_center/PReleases/2019/005.asp>.

²¹ IACHR Warns about Lack of Adequate Conditions to Hold Free and Fair Elections in Venezuela (Press release 18 May 2018) <http://www.oas.org/en/iachr/media_center/PReleases/2018/112.asp>.

²² E.g. the Commission warned for years of the human rights situation in Venezuela and a gradual weakening of its democratic institutions, mentioning that the executive and the judiciary had usurped legislative power, and that the popular vote had been suspended de facto (IACHR Condemns Supreme Court Rulings and the Alteration of the Constitutional and Democratic Order in Venezuela, Press release 31 March 2017, <http://www.oas.org/en/iachr/media_center/PReleases/2017/041.asp>), in light of the lack of judicial independence and the constant interference of the Supreme Court of Justice. In its report 'Democratic Institutions, the Rule of Law and Human Rights in Venezuela' <<http://www.oas.org/en/iachr/reports/pdfs/Venezuela20>> the Commission highlighted non-compliance with the principle of the separation of powers in the country.

²³ Given this fundamental connection, the states have to guarantee the role of democratic institutions even during states of emergency and exception, when certain rights may need to be temporarily suspended. IACHR, Democratic institutions, the rule of law and human rights in Venezuela: Country report 31 December 2017.

²⁴ IACHR Calls for Guarantees for Democracy and the Rule of Law during the COVID-19 Pandemic, Press release 10 June 2020, <https://www.oas.org/en/iachr/media_center/PReleases/2020/130.asp>. See also IACHR Alerts About Further Weakening of Rule of Law in Venezuela Ahead of New Presidential Mandate, Press release 9 January 2019.

²⁵ Amongst many, Cecilia Medina Quiroga, *The Battle of Human Rights: Gross, Systematic Violations and the Inter-American System* (Martinus Nijhoff 1988); Hilde Hey, *Gross Human Rights Violations: A Search for Causes* (Martinus Nijhoff 1995).

²⁶ Charter of the Organization of American States ('Charter of Bogota') 30 April 1948 entered into force 13 December 1951.

²⁷ American Declaration on the Rights and Duties of Man ('Bogota Declaration') 2 May 1948; Article 112 OAS Charter.

²⁸ American Convention on Human Rights ('Pact of San Jose'), 22 November 1969, entered into force 18 July 1978.

hemisphere, it started to document violations and promote human rights applying the Declaration, being the only existing regional human rights instrument at the time. In 1965 the Commission was granted competence by the OAS political bodies to examine individual petitions alleging human rights violations.²⁹ Thus, the Commission started to apply the Declaration when examining the complaints it was receiving. The ACHR, which entered into force in 1978, is the first regional inter-American human rights treaty, but has not been ratified by all OAS States (e.g. the US; Canada; some Caribbean island states), while others have even denounced it (e.g. Trinidad/Tobago in 1999). The Convention created the Inter-American Court, which started to work in 1979 but only began to exercise its judicial competences in earnest in 1988.

The IAHRs has three protection levels: states which have not ratified the ACHR have obligations under the Declaration and are supervised by the Commission; states having ratified the ACHR are obligated under it and are supervised by the Commission; states having ratified the ACHR and having accepted the IACtHR's jurisdictional competence, are obligated under the ACHR and are supervised by the Commission and the Court.

4. Political and Normative Context and the Role of NGOs

4.1. Political Context and the Role of NGOs

From the point of view of the political context the role played by NGOs within the IAHRs, ranging from complete inaction, to documenting or even denouncing human rights violations before the IAHRs monitoring bodies, can be divided in three different temporal stages.

a. First Stage: no activity (1948–1959)

The first stage coincides with the moment in which an embryonal IAHRs was created and ended when the IACHR started to work, while at the same time from a geopolitical point of view some Latin-American states started to be ruled by repressive regimes. A regional human rights system was established, but as in practice no monitoring activity in the ambit of human rights was undertaken, existing civil society actors did not and could not engage with the system.

The OAS was an international organisation committed to human rights, since its main principles include the protection of fundamental rights of the individual without distinction as to race, nationality, religion or sex.³⁰ Although in 1948 the OAS Charter already referred to the Commission and a future American Convention, and the American Declaration was already in place, in practice the OAS Charter had not created any human rights organ nor a binding human rights treaty.³¹ While repression was omnipresent under certain regimes, the IAHRs was embryonal and dormant,³² and there was no interaction between domestic NGOs and the IAHRs, because from a formal perspective there was simply no supervisory human rights body within the system.

b. Second stage: denunciation and cooperation (1959–1980s)

During this period, within the IAHRs, two human rights supervisory bodies were created and a legally binding human rights treaty was adopted, while from a political point of view, this stage coincides with a continent full of non-democratic states.

The creation of the Inter-American Commission (in 1959) as an anti-communist entity,³³ but which was not meant to interfere with the domestic affairs of OAS States,³⁴ as well as the coming into being of the Inter-American Court, following the entry into force of the 1969 American Convention (1978) (while the Court had its first meeting in 1979), were important factors to promote and operationalise – at least from a formal point of view – the human rights incorporated in the OAS Charter and the American Declaration.

The bleak situation showed a continent almost full of non-democratic states, ruled by military dictatorships, such as Argentina (1976–1983), Chile (1973–1990), Brazil (1964–1985) and Uruguay (1973–1985), and/or states confronted with internal armed conflicts, such as Guatemala (1960–1996), El Salvador (1979–1992),

²⁹ The Commission was created by a resolution of the Fifth Meeting of Consultation of Ministers of Foreign Affairs in Santiago, Chile, in 1959. It was formally established in 1960 when the Permanent Council of the OAS approved its Statute. Its Rules of Procedure, first adopted in 1980, were amended several times thereafter, most recently in 2013. See <<http://www.oas.org/en/iachr>>.

³⁰ OAS Charter, (n9) Art 3(l).

³¹ *ibid* Art 106.

³² Edward I. Cleary, *The Struggle for Human Rights in Latin America* (Praeger 1997) 124 (speaking of 'weak or non-existent strength in dealing with human rights').

³³ E.g. Felipe Gonzalez, 'The Experience of the Inter-American Human Rights System' (2009) 40 VUWLR 103.

³⁴ Cecilia Medina Quiroga, *The Battle of Human Rights: Gross, Systematic Violations and the Inter-American System* (Martinus Nijhoff 1988).

Peru (1980–2000) and Colombia (1960–2016). These regimes were very repressive and violent towards society, as basically anyone who was perceived as a subversive was immediately arrested, imprisoned, tortured, summarily executed or forcibly disappeared.³⁵ This period was characterized by total impunity. Relatives of the victims of human rights violations tried to bring their cases before domestic courts and to seek justice, in vain, as in practice, there perpetrators were not identified, prosecuted nor punished.³⁶

During this period, as a reaction to those repressive regimes, human rights NGOs started to be created, especially in Argentina, in contrast with Brazil or Chile.³⁷ Some NGOs were composed of relatives of the victims of human rights violations³⁸ and they were essentially national.³⁹ These NGOs found in the Commission the only platform available to denounce and document the human rights violations which were occurring at the national level.⁴⁰ That was for example the case of the Argentinean NGO *La Asociación de las Abuelas de Plaza de Mayo* (Association of the Grandmothers of the May Square) created in 1977. The NGO was (is) composed of Argentinian grandmothers whose children were disappeared and grandchildren were illegally adopted during the military dictatorship between 1976 and 1983.⁴¹ Another NGO, the *Centro de Estudios Legales y Sociales* (CELS) (Center for Legal and Social Studies) was also established in Argentina during the dictatorship (in 1979).⁴² And in Chile the civil society organisation *La Fundación de Ayuda Social de las Iglesias Cristianas* (FASIC) (Foundation of Social Help from the Christian Churches) was created in 1975 and conducted important work focusing on Chilean political detainees under the dictatorship.⁴³

Some other NGOs had a regional character, such as the *Federación Latinoamericana de Asociaciones de Familiares de Detenidos-Desaparecidos* (FEDEFAN) (Latin-American Federation of Associations of Relatives of Detainees-Disappeared) created in 1981. Still other NGOs were more global in scope, with a clear mandate to document human rights violations, and pressurize for justice and accountability, and some NGOs which were very also active in the Americas, even predated the oppressive regimes. This was for example the case for *Amnesty International*, which was created in 1961.⁴⁴ A commission established by this global NGO was sent to visit Argentina in 1976. *Amnesty International's* focus on Latin-America is also illustrated by the mutually beneficial partnership with José Zalaquett, a former Allende government minister who had set up a human

³⁵ See Amnesty International Report 1975–76 (1976) 85–116, <<https://www.amnesty.org/download/Documents/POL1000011976ENGLISH.PDF>>.

³⁶ See, for example, IACtHR, *Velasquez Rodriguez v Honduras*, Judgment 29 July 1988, paras 57, 94; IACtHR *Paniagua Morales et al v Guatemala*, Judgment 8 March 1998, paras 93, 171, 173; IACtHR *Street Children v Guatemala* 19 November 1999, para 228; IACtHR *Barrios Altos v Peru*, Judgment 14 March 2001, paras 42–44; IACtHR *Myrna Mack Chang v Guatemala*, Judgment 25 November 2003, paras 216, 217, 272; IACtHR *Plan de Sanchez Massacre v Guatemala* 29 April 2004, paras 2, 34, 38. Being active in an NGO was a dangerous activity. For example, in Guatemala, in the early 1980s repression was so acute that human rights organisations found it necessary to suspend activities (E Cleary, *The Struggle for Human Rights in Latin America* [Praeger 1997] 122).

³⁷ Alison Brysk, *The Politics of Human Rights in Argentina: Protest, Change, and Democratization* (Stanford University Press 1994); Patrick W Kelly, *Sovereign Emergencies. Latin America and the Making of Global Human Rights Politics* (CUP 2018) 215; Héctor Leis, *El movimiento por los derechos humanos y la política argentina* (Centro Editor de América Latina 1989) 17–19.

³⁸ This was for example the case for CELS, which has been established by the lawyer Emilio Mignone, together with three like-minded lawyers and four women belonging to the *Madres de Plaza de Mayo*, all of whom had lost family members (Mignone had lost his daughter) after the coup in Argentina.

³⁹ On national and international human rights NGOs: Henry Steiner, *Diverse Partners, Non-Governmental Organizations in the Human Rights Movement*, Report of a Retreat of Human Rights Activists, Harvard Law School Human Rights Program and Human Rights Internet (1999) 4–9, <http://hrp.law.harvard.edu/wp-content/uploads/2013/08/Diverse_Partners.pdf>.

⁴⁰ See David Padilla, 'The Inter-American Commission on Human Rights of the Organization of American States: A Case Study' [1993] *Am U J Int'l L & Pol'y*, 95; Monica Pinto, 'NGOs and the Inter-American Court of Human Rights', in Tullio Treves et al., (eds), *Civil Society, International Courts and Compliance Bodies* (Asser Press 2005) 49; Enzamaría Tramontana, 'La Participación de las ONG en el Sistema Interamericano de Protección de los Derechos Humanos: Avances, Desafíos y Perspectivas', in A von Bogdandy, Eduardo Ferrer-MacGregor and Mariela Morales (eds), *La Justicia Constitucional y su Internacionalización* (Instituto de Investigaciones Jurídicas 2010) 536.

⁴¹ The NGO brought cases before the Argentinian courts, thereby exhausted domestic remedies, in order to find the children. The NGO is mentioned in the Annual Report of the Commission of 1980.

⁴² See Luis Bruschtein, 'La Historia de los Organismos de Derechos Humanos' [2002] 2(8) *Revista Puentes*, 69 and <<https://www.cels.org.ar/web/en/presentacion>>.

⁴³ This NGO submitted the petition in IACtHR *Castillo Petruzzi et al v Peru*, Judgment 15 October 1993.

⁴⁴ In a Report published in 1976 by Amnesty International it was mentioned that throughout 1975 and 1976 there had been a slight but unmistakable deterioration in the overall human rights' situation in the Americas, particularly in the southern cone countries. One factor common to all the countries of the *Cono Sur* has been a reaction by the military to what they conceived to be a threat to the established centre of power from either violent guerrilla movements or even the democratically-elected leftwing (as was the case in Chile). Significantly, Latin American countries which have fewer political prisoners, have not experienced such an alleged threat to their stability. See Amnesty International Report 1975–76 (1976), 85–116, <<https://www.amnesty.org/download/Documents/POL1000011976ENGLISH.PDF>>.

rights NGO after the coup and had become a symbol of the Latin-American exiled human rights activists, eventually rising to prominence within *Amnesty International* itself as a member of its international board.⁴⁵ Also, the *International Human Rights Law Group* (IHLRG), created in 1978 and working in 22 countries,⁴⁶ was present in Latin-American countries at that time.

The constant dialogue between the inter-American human rights bodies with the present-day large and ever-increasing number of both Latin-American and North-American-based NGOs, defending a remarkably broad and diverse palette of vulnerable groups in society, through the equally ever-increasing number of petitions brought to the IAHRs monitoring bodies or through engaging with them as *amici curiae*, etc., thereby laying their trust in the monitoring bodies' opinions, as well as the OAS States' ongoing engagement with the same supervisory bodies has certainly given life and legitimacy to the IAHRs.⁴⁷ And this in turn also allowed the OAS as an international organisation to carve out important political space.⁴⁸ NGOs have been very active in approaching the IACHR, and the IACHR has been very receptive in that regard. The latter is probably due to the fact that given the lack of sufficient own resources to prepare cases, it sees the NGOs as a reliable ally which can muster and provide sufficient support in that regard. From the very beginning, the IACHR has established and maintained permanent interaction and active dialogue with all these NGOs. The Commission received petitions submitted by the NGOs, the Commission also conducted on-site visits, for instance in El Salvador and Honduras in 1969, Argentina in 1979,⁴⁹ and Nicaragua in 1980,⁵⁰ hearing testimony from claimants,⁵¹ including NGOs, such as the NGO *Asociacion Madres de Plaza de Mayo* in Argentina,⁵² and the NGO *Comision Permanente de Derechos Humanos en Nicaragua* (CPDH) (Permanent Commission on Human Rights in Nicaragua),⁵³ both founded in 1977. The Commission's resolutions subsequently ordered complete and impartial investigations to identify the perpetrators of the acts reported. The Commission also ordered states to report within a period of time on the steps taken to implement the recommendations included in its resolutions.⁵⁴ The Commission communicated its findings to the international community through its annual and country reports.⁵⁵ As such, the weak voices of NGOs within countries were heard and reinforced by the Commission.⁵⁶ The Commission also catalysed the formation of human rights NGOs in the Americas.⁵⁷

In this stage, the main role of the human rights NGOs before the Commission was one of 'denunciation' and 'cooperation.' In this context, the NGOs were active on two fronts: (a) NGOs played a fundamental role in providing relevant information, which was essential for the elaboration of so-called country reports prepared by the Commission with respect to States with massive and systematic violations of human rights and the rule of law. In this respect, the first country report published by the Commission with regard to Cuba

⁴⁵ Patrick W Kelly, *Sovereign Emergencies. Latin America and the Making of Global Human Rights Politics* (CUP 2018) 171. Also: Amnesty International, 'Amnesty International mourns the loss of a human rights legend, professor José Zalaquett | Amnesty International' <<https://www.amnesty.org/en/latest/news/2020/02/amnesty-international-mourns-loss-professor-jose-zalaquett>>.

⁴⁶ The International Human Rights Law Group (IHLRG) works in more than 88 countries to help local leaders and organisations address domestic human rights abuses and to lift those struggles out of isolation and onto the international stage where regional and global institutions develop and enforce human rights standards.

⁴⁷ On some occasions requesting also precautionary and provisional measures. See Clara Burbano Herrera and Yves Haeck, 'Comentario al procedimiento al Sistema Interamericano de Derechos Humanos: artículo 76 del reglamento de la Comisión Interamericana de Derechos Humanos', in Marie Christine Fuchs, Camilo Sanchez and Miguel Barbosa (eds), *Comentario al procedimiento ante el Sistema Interamericano de Derechos Humanos* (Mexico DF, Konrad Adenauer Stiftung 2021).

⁴⁸ Edward L. Cleary, *The Struggle for Human Rights in Latin America* (Praeger 1997) 124.

⁴⁹ Where it received 6.000 separate denunciations. IACHR, Annual Report 1980, and IACHR, Resolution N° 12, 1980, *Case 3358 v Argentina*, 9 April 1980, para 3. See Tom Farer, 'I cried for you, Argentina' [2016] 38(4), *Hum Rts Q*, 851.

⁵⁰ IACHR, Report on the Situation of Human Right in the Republic of Nicaragua 1981.

⁵¹ IACHR, Annual Report 1980, and IACHR, Resolution N° 12, 1980, *Case 3358 v Argentina*, 9 April 1980, para 3.

⁵² *ibid.*

⁵³ IACHR (n50).

⁵⁴ See also, IACHR, Resolution n° 18, 1978, *Case 2088, A v Argentina*, 18 November 1978.

⁵⁵ Article 41(g) American Convention. See e.g. IACHR, Reports 1962, 1963, 1967 and 1979, Reports on the Situation of Human Rights in Cuba; IACHR, Reports 1965 and 1966, Reports on the Situation of Human Rights in the Dominican Republic; IACHR, Reports 1974, 1976 and 1977, Reports on the Situation of Human Rights in Chile; IACHR, Report 1978, Report on the Situation of Human Rights in El Salvador.

⁵⁶ Edward C. Cleary, *The Struggle for Human Rights in Latin America* (Praeger 1997) 127.

⁵⁷ Patrick W Kelly, *Sovereign Emergencies. Latin America and the Making of Global Human Rights Politics* (Cambridge University Press 2018) 271. Also: Amnesty International, 'Amnesty International mourns the loss of a human rights legend, professor José Zalaquett | Amnesty International' <<https://www.amnesty.org/en/latest/news/2020/02/amnesty-international-mourns-loss-professor-jose-zalaquett>>.

in 1962, and the reports related to the critical situation in Colombia (with an internal armed conflict) and Argentina (with a military dictatorship) are good examples. The NGOs activities of denunciation of human rights violations and rule of law issues were fundamental, as well as their constant cooperation with the Commission during this period; (b) NGOs submitted petitions, or more precisely, 'letters' referring to specific cases related to human rights violations before the Commission. One should be aware that at that time there was no 'formal petition system,' however in practice NGOs sent plenty of complaints to the Commission. By 1979 and its visit to Argentina, in order to facilitate complaints, the Commission had designed a three-page complaint form. This form not only asked complainants to mention possible human rights violations, but specific questions were also asked about the status of the rule of law in Argentina (was a writ of *habeas corpus* filed, with which judicial organ, etc.).⁵⁸ Ultimately, the petitions in Argentina and other countries alleged mostly violations to the right to life and physical integrity in the context of the actions taken by the respective repressive regimes towards their citizens.

With the entry into force of the American Convention, the informal practice of 'denunciation and cooperation' just mentioned, was complemented with a formal petition system at the beginning of the 1980s, when the IACtHR started to work. At this stage, although the petition system was thus up and functioning in practice, the IACHR did, however, not send cases to the Court. For this reason, the IACtHR focused its activity on producing advisory opinions. In this framework, the Court gave NGOs ample space to intervene in the judicial debate through their participation as *amici curiae*. The Court provided non-parties, including NGOs the opportunity to express their opinions on the applicable facts and law in a given case. For example, on the occasion of the first advisory opinion (OC-1/82, submitted by Peru) issued by the Court in 1982, different NGOs, such as the *International Human Rights Law Group* and the long-standing NGO *International League for Human Rights*,⁵⁹ offered their points of view on the request as *amici curiae* (also *infra*, sub 4.2.b). Ever since NGOs have been extremely active through *amici* briefs in providing the IACtHR with info in the ambit of its advisory jurisdiction (*infra*, sub 4.2.b).

c. Third Stage: Seeking justice and promoting human rights, and giving vital political support to the system (end 1980s–today)

The end of the repressive regimes and the re-establishment of (fragile) democracies in almost all states of the Americas at the end of the 1980s characterize the third stage. During this period, we see two important developments, namely: the consolidation of the IAHRs with the dynamization of the work of the IACHR and the IACtHR, especially with respect to the individual complaint procedure; and it has also been a period in which lots of new HR NGOs have been established.

Some NGOs are, once again, national, limiting their activities to their home country, such as the *Fundación Myrna Mack* (Myrna Mack Foundation) created in 1993, which works on human rights issues in Guatemala, while others are regional NGOs acting in two or more countries, for instance the *Comisión Andina de Juristas* (Andean Commission of Jurists) (CAJ), which was set up in 1982 to strengthen the rule of law in the Andean countries Bolivia, Chile, Colombia, Ecuador, Peru and Venezuela, of which the *Comisión Colombiana de Juristas* (CCJ) (Colombian Commission of Jurists), created in 1988, is an affiliate. Other regional NGOs are the *Center for Justice and International Law* (CEJIL), created in 1991 by a group of persons with experience in the IAHRs, and the *Due Process of Law Foundation* (DPLF), which was founded in 1996 by Thomas Buergenthal –a former Judge and President of the IACtHR (1979–1991)– and his colleagues from the UN Truth Commission for El Salvador, who were convinced that human rights could only be guaranteed by strong and independent national judicial systems, to the extent that they created an NGO dedicated to the promotion of the rule of law in Latin-America, through the use of analysis and recommendations, cooperation with private and public organizations and institutions, exchanges of experiences, and advocacy efforts.⁶⁰ At the same time, it can be observed that some national HR NGOs started to work together, as well as with the expertise and financial-wise better-equipped regional –often US-based– NGOs (such as CEJIL), creating either national or transnational alliances.

In this stage NGOs assume a very active role, carrying out several activities such as: (1) Seeking justice at the international level. Indeed, NGOs are very active in submitting individual petitions before the Commission

⁵⁸ Comisión Interamericana de Derechos Humanos: Formulario de Denuncia, in CIDH, Víctimas I, Cajas, CIDH, CELS.

⁵⁹ The International League for Human Rights was created in 1942, with basis in New York, and works in the Americas, Europe and Africa.

⁶⁰ See <<http://www.dplf.org/en/who-we-are>>.

and at the same time acting as a representative of the victims, as they do not only possess the expertise but also the financial means to pursue the case on behalf of the alleged victim(s), who mostly are in a financially precarious situation. Soley correctly points out that this role will persist, given the costs of the often long proceedings;⁶¹ (2) Supervising at the national level the compliance of the judgments delivered by the IACtHR and recommendations issued by the IACHR; (3) Communicating their findings to the inter-American human rights organs; (4) Intervening before the IACtHR as an *amicus curiae*; (5) Lobbying with the OAS political organs; (6) Promoting human rights at the national and regional level, by actively participating in public hearings before and providing relevant information to the IACHR, which is again essential for underpinning the IACHR's country but also thematic reports; (7) Exercising pressure through the media and social media with respect to weak countries and by (8) Seeking to mobilize public opinion against human rights violators.

From a substantive perspective, until the 1990s the IACtHR was seized with a limited number of cases. These cases alleged serious human rights violations committed during the repressive regimes (described in the first and second stage), mainly including massacres, forced disappearances, torture and lack of judicial protection.⁶² These cases were submitted by NGOs that acted as representatives of the alleged victims. For example, the role played by the *Comité para la Defensa de los Derechos Humanos* en Honduras (Committee for the Defense of Human Rights in Honduras), the *Comité de Familiares y Desaparecidos* (the Committee of Relatives and Disappeared), the *Asociación Centro-Americana de Familiares de Desaparecidos* (Central American Association of Relatives of the Disappeared) and *Human Rights Watch* (formerly Helsinki Watch [1978], which set up America Watch [in the 1980s] and then changed its name) (1988)⁶³ have been fundamental in one of the most emblematic IAHRS cases and its first judgments on the merits, namely *Velasquez Rodriguez and Godinez Cruz vs Honduras*. In this case, Honduras was declared internationally responsible by the IACtHR for enforced disappearances.⁶⁴

As from 2000 on the number of cases sent by the IACHR to the Court has also increased exponentially.⁶⁵ Although the allegations of many of the cases are still related to human rights violations which have occurred during the political context described in Stages one and two,⁶⁶ other types of cases have also been sent to the Court, so that there is now a greater diversity of cases, among others related to persons belonging to the most vulnerable groups in society, such as children, migrants, women, indigenous peoples, LGBTIQ+, human rights defenders, including journalists, but also justice actors and rule of law issues, and more recently also cases which more directly deal with slavery-like working conditions and human trafficking, and economic and social rights.

The case of *Maria da Penha Maia Fernandes v. Brazil*, submitted by two NGOs, namely the *Latin-American and Caribbean Committee for the Defence of Women's Rights* (CLADEM) and the *Center for Justice and International*

⁶¹ Ximena Soley, 'The Crucial Role of Human Rights NGOs in the Inter-American System', 113 (2019) AJIL Unbound 358.

⁶² IACtHR, *Mapiripán Massacre v Colombia*, Judgment 15 September 2005; IACtHR, *Juan Humberto Sanchez v Honduras*, Judgment 7 June 2003; IACtHR, *Neira Alegria et al v Peru*, Judgment 19 January 1995.

⁶³ See <<https://www.hrw.org/about/about-us>>.

⁶⁴ This judgment has been fundamental for interpreting Article 1(1) ACHR in order to determine states responsibility for human rights violations. Since the beginning, the IACtHR has addressed, with particular care, the issue of the 'obligation' to comply with human rights. In *Velásquez Rodríguez* the Court held that Article 1(1) is fundamental to determining whether a violation of the human rights recognized by the ACHR can be attributed to a state; and specified the existence of two general obligations in international human rights law that derive from the provisions of that precept, namely the obligation to 'respect' and the obligation to 'ensure' rights. On this case: Juan Mendez and José Miguel Vivanco, 'Disappearances and the Inter-American Court: Reflections on a Litigation Experience' [1990] 13 Ham L Rev, 507. Also Enzamaría Tramontana, 'La Participación de las ONG en el Sistema Interamericano de Protección de los Derechos Humanos: Avances, Desafíos y Perspectivas,' in Armin von Bogdandy, Eduardo Ferrer-MacGregor and Mariela Morales (eds), *La Justicia Constitucional y su Internacionalización* (Instituto de Investigaciones Jurídicas 2010) 539.

⁶⁵ From 1979 until 2019 the IACHR has received in total 314 cases. See <https://www.corteidh.or.cr/cf/Jurisprudencia2/busqueda_casos_contenciosos.cfm?lang=es>.

⁶⁶ For example, in 2013, the Commission sent *Rochac Hernandez v El Salvador* to the Court, which had been submitted by the NGO *La Asociación Pro-Búsqueda de Niños y Niñas Desaparecidos* (Association for Disappeared Children). It concerns the forced disappearances of five children in El Salvador during the country's internal armed conflict in the early 1980s by the Salvadoran army in the course of counter-insurgency operations. The relatives of the children submitted multiple complaints with various authorities, all of whom failed to investigate or even record some of the complaints for over thirty years. The importance of the case lies in the further clarification of a States' obligations when it comes to investigating gross human rights violations, in casu the enforced disappearances of children. See IACtHR *Rochac Hernandez v Salvador*, Judgment 14 October 2014, para 2. The present-day situation in some countries (e.g. Venezuela, Nicaragua, etc.) where authoritarian governments use their very repressive state apparatus against big parts of its population, thereby committing heinous crimes (summary executions, forced disappearances, arbitrary detentions, etc.) seems to indicate that 'the demons from the dictatorial Latin-American past' have not disappeared or better are reappearing, so that eventually cases against these countries will also be brought before the IAHRS.

Law (CEJIL) is one example.⁶⁷ This case alleged domestic violence suffered by a woman. In 1983, Ms da Penha Fernandes was fast asleep when her husband shot her, leaving her paraplegic for life and suffering from severe physical and psychological trauma. After surviving the attempt on her life and undergoing numerous surgeries, Maria returned home. Two weeks after her return from hospital, her husband tried to electrocute her. Fifteen years after the facts, the case had not been decided at the national level and Maria's husband remained free. Maria's case was the first time the Commission issued a decision on a state's failure to comply with its obligations under the Belém do Pará Convention,⁶⁸ ensuring that the gender dimensions of the case (beyond the domestic violence at the hands of the husband) were not overlooked and the discrimination the victim faced within the Brazilian court system was addressed.⁶⁹ The Commission recommended Brazil to change its law and provide symbolic and material compensation. As a result of this case, NGOs began to work at the national level, encouraging changes in domestic legislation and sensitizing and training those involved in the fight against violence against women. Subsequently, Brazil created mechanisms to prevent domestic violence against women, reformed the criminal code and procedure.⁷⁰ The 'Maria da Penha Law on Domestic and Family Violence' ('Maria da Penha Act') was enacted in 2006 as a result of the Commission's recommendation. This law established special courts, increased sentences for perpetrators and established police stations and shelters for women in big cities among other instruments for the prevention and relief of domestic violence.⁷¹

Besides, there are also cases related to violence against persons with a mental illness, for instance, the case of *Ximenes Lopes v Brazil*.⁷² Here the NGO *Centro por la Justicia Global* (Centre for Global Justice) submitted the petition before the Commission.⁷³ Recently, the Court decided a case concerned the slavery-like working conditions of 85 workers, some of them children, in a privately-owned cattle ranch in Brazil, thereby rendering its first judgment on slavery and human trafficking (Article 6 ACHR) and the first time that the Court recognises the existence of structural discrimination based solely on the economic position of the victim. The case also contributes to the issue of state responsibility for human rights abuses committed by private actors and its connection with the obligation to control by the State.⁷⁴ The petition was submitted by two NGOs, namely the *Comision Pastoral de la Tierra* (Pastoral Commission for the Land) and the *Center for Justice and International Law* (CEJIL).⁷⁵

The Brazilian experience is very important to mention because all the cases submitted to the IACtHR against Brazil have been the result of the work of the victims and local and international NGOs.⁷⁶ These NGOs have selected paradigmatic cases and they have litigated the cases at the domestic and international level. They have had also an active role in the implementation of the cases won at the international level.⁷⁷

In the case of the *Street Children v Guatemala*, the *Center for Justice and International Law* (CEJIL) and the NGO *La Casa Alianza*, which focuses on the defense and protection of street children in Guatemala, Honduras, Mexico and Nicaragua, have played a fundamental role in the denunciation of the violations against street children. In this case, the Court established the obligation upon states to provide special protection to street children adopting measures to ensure them a life with dignity.⁷⁸

A case on discrimination against LGBTI people, *Atala Riffo v Chile*, has been submitted by *La Asociación Gremial Libertades Públicas* (Trade Association for Public Liberties) and *La Fundación Ideas* (Ideas Foundation).

⁶⁷ The petition was submitted in 1998 and the recommendation was adopted in 2001.

⁶⁸ Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women ('Convention of Belém do Pará'), 9 June 1994, entered into force 3 May 1995.

⁶⁹ Maria tried to access justice through Brazilian courts, but although the shooting occurred in 1983, charges would not be brought against her husband until 1985 and the first trial would not begin until 1991. For 15 years, Maria's case remained in the Brazilian justice system, and her husband remained free.

⁷⁰ The petition was submitted in 1998, and the recommendation was issued by the Commission in 2001.

⁷¹ IACHR, *Maria Da Penha Maia Fernandes v Brazil*, Report 54/01, Case 12.051, 16 April 2001.

⁷² IACtHR, *Ximenes Lopes v Brazil*, Judgment 4 July 2006.

⁷³ Damião Ximenes-Lopes was a person with mental illness and he was hospitalized for psychiatric treatment at a private psychiatric clinic that operated within Brazil's public health system, but he died three days later while undergoing psychiatric treatment. He endured 'inhuman and degrading' conditions and died under violent circumstances in the hands of hospital staff.

⁷⁴ IACtHR, *Hacienda Brazil Verde Workers v Brazil*, Judgment 20 October 2016.

⁷⁵ *ibid*, para 2.

⁷⁶ Flavia Piovesan, *Derechos humanos e o direito constitucional internacional* (Saraiva 2012) 431; K Sikkink, 'Human Rights, Principled Issue-Networks, and Sovereignty in Latin America' [1993] *International Organizations*, 414; Thomas Risse, Kathryn Sikkink and Stephen C Ropp, *The Power of Human Rights: International Norms and Domestic Change* (CUP 1999) 275.

⁷⁷ *ibid*.

⁷⁸ IACtHR, *Street Children v Guatemala*, Judgment 19 November 1999.

Being the first LGBTI case before the Court, it concerned the discriminatory treatment and arbitrary interference in the private and family life of Karen Atala Riffo. Ms. Atala Riffo is a Chilean judge and a lesbian mother of three daughters. She separated from her husband in 2001 and she originally reached a settlement with her ex-husband that she would retain custody of the children. When she came out as a lesbian in 2005, however, her ex-husband sued for custody, where the case was eventually heard by Chile's Supreme Court, which awarded the husband custody, saying that Atala Riffo's relationship put the development of her children at risk. With its judgment in *Atala Riffo*, the IACtHR recognised sexual orientation for the first time in its case law as a protected category under the ACHR. The Court concluded that 'no domestic regulation, decision, or practice, whether by state authorities or individuals, may diminish or restrict, in any way whatsoever, the rights of a person based on his or her sexual orientation.'⁷⁹

While for decades very many cases concerning classic violations as a result of heinous crimes (e.g. arbitrary detentions, torture, disappearances, summary executions, absence of an independent or impartial judge, etc.) have been instigated, litigated, etc., by so-called 'friendly' or 'progressive' NGOs, during the last decade more controversial issues have been brought before the Commission and/or the Court, either through the contentious or the advisory proceedings (e.g., LGBTIQ+, reproductive health, and abortion cases). This has also led to especially a backlash from evangelicals.⁸⁰ For example, both in *Atala Riffo v Chile* concerning the Chilean judge who had lost custody over her children to her former husband, after outing herself as a lesbian, as well as in *Artavia Murillo v Costa Rica* concerning the Costa-Rican prohibition on *in vitro* fertilisation, as decided by the Supreme Court of Costa Rica, where the Court on both occasions ruled in favour of the alleged victims,⁸¹ the Alliance Defending Freedom (ADF), a US-based 'pro-family' organisation with a seat in Mexico DF, had each time submitted an *amicus brief* before the Inter-American Court. In *Artavia Murillo* the Inter-American Court's judgment holding Costa-Rica accountable under the ACHR, led to a fight before and by the Supreme Court of Costa Rica following a petition brought by evangelicals in that regard. The case of *Duque v Colombia*, concerning the pension rights of same-sex couples, once again led to an intervention by the ADF and a subsequent legal defeat before the Court.⁸² Finally, the 2017 Advisory Opinion of the Inter-American Court, holding that same-sex couples should enjoy all rights without discrimination, and laying down standards for the self-determination of gender identity,⁸³ once again leading to a stand-off, this time during the Costa-Rican presidential elections and between LGBTIQ+minded voters and evangelicals. In short, Evangelically-inspired NGOs will remain a factor to reckon with before the IAHRs monitoring bodies during the next years.

Overall, by the end of October 2020, the IACtHR had delivered around 395 judgments, many of which have been initiated by national, regional and international NGOs. Certainly, the *Center for Justice and International Law* (CEJIL) is one of the most active ones in terms of submitting petitions. According to CEJIL's director Viviana Krsticevic,⁸⁴ CEJIL has acted as a representative of the victims in between 40 and 50% of the cases that the Commission has received. CEJIL has currently four offices: one in Brazil, one in Argentina, one in Costa Rica and one in Washington DC.⁸⁵ The sheer number of cases it litigates and its broad field presence on the American continent underlines its key or even dominant – some might even argue monopolist-like –, litigating role within the entire system. However, its strategic presence in two places in the Southern Cone and thus away from its Washington DC and San José offices, as well as its list of cases, clearly points to its ambition to be an *inter-American* NGO, willing to stay closely connected with local stakeholders – see the 400 national NGOs with which it has set up an alliance – in the inter-American *espace juridique* and therefore support such NGOs and subsequently jointly bring cases before the inter-American system.⁸⁶ This

⁷⁹ IACtHR, *Atala Riffo v Chile*, Judgment 24 February 2012.

⁸⁰ On this see Rene Urueña, 'Evangelicals at the Inter-American Court of Human Rights' (2019) 113 AJIL Unbound; Rene Urueña, 'Reclaiming the Keys to the Kingdom (of the World): Evangelicals and Human Rights in Latin-America' (2018) 49 Neth Yb Int'l L 178. In a broader American perspective: Douglas NeJaime and Reva Siegel, 'Conscience Wars in the Americas' (2020) 5 Lat Am L Rev 1.

⁸¹ IACtHR, *Atala Riffo v Chile*, Judgment 24 February 2012; IACtHR, *Artavia Murillo and others v Costa Rica* ('*In Vitro Fertilisation*'), Judgment 28 November 2012.

⁸² IACtHR *Duque v Colombia*, Judgment 26 February 2016.

⁸³ IACtHR, *Gender identity, and equality and non-discrimination with regard to same-sex couples. State obligations in relation to change of name, gender identity, and rights deriving from a relationship between same-sex couples*, Advisory Opinion OC-24/17, 24 November 2017.

⁸⁴ Informal talk between one of the authors and Viviana Krsticevic in 2017.

⁸⁵ CEJIL has a regional character. The NGO was created in 1991 after a meeting in Venezuela. Currently CEJIL employs 13 (fulltime) lawyers, has four regional directors and one general director.

⁸⁶ See Map of Cases CEJIL: <<https://cejil.org/en/map-of-cases>>.

may be indicative of at least a certain bottom-up approach as to cases CEJIL as an NGO with its main seat in Washington DC takes on.⁸⁷ Still, one may wonder whether national NGOs would stand a chance before the Commission without the big and established players, such as CEJIL. The earlier-mentioned *Centro de Estudios Legales y Sociales* (CELS), which has its seat in Buenos Aires, is another – be it exclusively Latin-American based – ‘repeat player’ in that regard.

During the Covid-19 crisis, NGOs have been very active in terms of informing and denouncing to the Commission the diverse impacts of the pandemia in society. For example, during the public online sessions organised by the IACHR in December 2020, the Commission held an online meeting with human rights NGOs to gather information on the human rights situation, particularly in response to the pandemic. This meeting was attended by representatives of organisations from Argentina, Bolivia, Brazil, Chile, Colombia, the Dominican Republic, Mexico, Paraguay, Peru, the United States, and Venezuela.⁸⁸ The IACHR received a variety of information on the overall human rights situation in the region, namely regarding people who are especially vulnerable due to historical or structural discrimination such as women, children and adolescents, LGBTIQ+ people, indigenous peoples, people of African descent, people who are deprived of their freedom, and persons in movement. It was expressed that they continue to face serious obstacles to having their rights to life, personal integrity, or health guaranteed, among other rights enshrined in the ACHR, a situation that has been aggravated during the pandemic.⁸⁹

NGOs also played a vitally important political support role during the reflection process that took place within the OAS from 2011 to 2013 (the so-called ‘strengthening process’),⁹⁰ during which the Commission – following criticism and a backlash against the inter-American human rights system by a group of OAS members states (the ALBA countries and some others), developed a process to reform its Rules, policies and practices, with the aim of strengthening the promotion and protection of human rights. The process had as principal input the recommendations and observations presented by member States, but also civil society,⁹¹ victims, academia and other users. More concretely, the IACHR received comments from 47 civil society actors.⁹² NGOs made recommendations in seven areas: (1) challenges and medium and long-term objectives of the IACHR; (2) precautionary measures; (3) procedural matters in the processing of individual petitions; (4) amicable settlements; (5) criteria for the construction of Chapter IV of the IACHR’s annual report; (6) the promotion of human rights; and (7) the financial strengthening of the inter-American human rights system.⁹³ Anyway, NGOs have been instrumental in blocking the proposals from the aforementioned states aimed at weakening the system.

Similarly, civil society played an important role through the support and solidarity that it expressed to the Commission during its 2016 financial crisis.⁹⁴ The various organisations, through their writings and videos, expressed their deep concern to the OAS Member States due to the financial crisis of the Inter-American Commission, and the states were asked to ‘save the Commission’.⁹⁵ Thanks to the lobbywork of the NGOs

⁸⁷ We are therefore not convinced of Abregu’s opinion that ‘the agendas of national and international (or regional) organisations (NGOs) are increasingly different’ (Martin Abregu, ‘Human Rights for All: From the Struggle Against Authoritarianism to the Construction of an All-inclusive Democracy. A View for the Southern Cone and Andean Region’, 8 *Sur. International Journal of Human Rights*, 2008, 7).

⁸⁸ See <http://www.oas.org/en/iachr/media_center/PReleases/2020/311.asp>.

⁸⁹ *ibid.*

⁹⁰ The process formally ended on 22 March 2013.

⁹¹ Some NGOs participating during the reflection process were the *Centro de Estudios de Derecho, Justicia y Sociedad* (Dejusticia), *Conectas Direitos Humanos*, the *Centro de Estudios Legales y Sociales* (CELS), the *Instituto de Defensa Legal* (IDL), the *Due Process of Law Foundation* (DPLF), the *Fundación Construir*, the *Asociación Interamericana para la defensa del ambiente* (Aida), the *Asociación por los Derechos Civiles* (ADC), the *Centro de Derechos Humanos Miguel Agustín Pro Juárez*, the *Corporación Humanas*, and *Justiça Global*. See for example GT/SIDH/INF. 22/11 ; GT/SIDH/INF. 3/11 ; GT/SIDH/INF. 18/11 ; GT/SIDH/INF. 36/11.

⁹² IACHR, Resolution 1/2013, Reform of the Rules of Procedure, Policies and Practices, <<http://www.oas.org/en/iachr/decisions/pdf/Resolution1-2013eng.pdf>>.

⁹³ One can consult the documents of the Working Group and the Compilation of Recommendations of civil society organisations: <<http://www.oas.org/consejo/sp/grupostrabajo/Reflexion%20sobre%20Fortalecimiento.asp>>.

⁹⁴ In May 2016 the Commission communicated that if it did not obtain more financing to cover its budget for that year, it would be forced to lay off almost half of its staff and to suspend a large part of the activities planned for the second semester of 2016. See IACHR, ‘Severe Financial Crisis of the IACHR Leads to Suspension of Hearings and Imminent Layoff of Nearly Half its Staff’, Press Release 069/16, 23 May 2016, <<http://www.oas.org/es/cidh/prensa/comunicados/2016/069.asp>>; <https://www.oas.org/en/iachr/media_center/PReleases/2016/069.asp>. Also <<https://www.oas.org/es/cidh/prensa/crisis-cidh.asp>>.

⁹⁵ To consult all the samples of support received by the Commission from civil society during the financial crisis: <<https://www.oas.org/es/cidh/prensa/crisis-apoyo.asp>>, <<https://www.fidh.org/es/region/americas/carta-a-estados-miembros-de-la-oea-no-financiar-a-la-cidh-seria-un>>. Also <<https://www.youtube.com/watch?v=5wXGyPKXbKc&t=1s>>.

and civil society as a whole, the various Member States and the OAS decided to provide financial support to the Commission, and on 30 September 2016, the President of the IACHR, Commissioner James Cavallaro, announced that the acute financial crisis announced in May 2016 had been overcome.⁹⁶

4.2. Normative Context and the Role of NGOs

The legal context has also played an important role in the way how NGOs have approached the inter-American human rights organs. As will be shown, the inter-American human rights instruments have given tools to NGOs to work proactively but also reactively within the IAHRs, and thus with the IACHR and the IACtHR.⁹⁷ This has led some insiders⁹⁸ and other authors⁹⁹ to hold that NGOs agenda-setting power, an assertion which we agree with, although this has been a gradual process.

a. Legal standing before the Commission

The reason why in a large number of cases NGOs have acted as representatives of the victims is directly related to the fact that the ACHR has established a very broad 'legal standing' ('locus standi'). Article 44 ACHR states:

Any person or group of persons, or *any nongovernmental entity legally recognized in one or more member states of the Organization*, may lodge petitions with the Commission containing denunciations or complaints of violation of this Convention by a State Party. (emphasis added)

Urgent and complex situations required rapid responses. As can be seen, any NGO can bring petitions before the IACHR. The only requirement to be met, is that the NGO has to be legally recognized in one of the OAS States. The ACHR does not require the NGO to have a mandate from the victim, or to obtain an explicit or tacit consent in order to be able to submit a petition. Furthermore, the victim does not have to participate in the whole proceedings in the IAHRs, and the victim and the petitioner do not have to be the same actor.¹⁰⁰

b. Procedure before the Court

Once the procedure before the Commission has ended, only the IACHR and the State concerned have the competence to send cases to the IACtHR. In the procedure before the Court, historically two periods can be distinguished in terms of the role played by NGOs:

• Informal role (1979–2001)

Before 2001 NGOs were not allowed to directly approach the Court. During that period, once the case had been sent to the Court, there were two parties in the proceedings, namely the Commission and the state concerned. This aspect was problematic because the views of the victim(s) and his/her/their representatives on occasions were different from those of the Commission. However, despite this lack of power to act before the Court, the Commission in practice allowed NGOs to participate in the process as its 'assistants' or 'legal advisers,' namely in gathering information on the facts and in the selection and presentation of the evidence, but always under the formal direction of the Commission, which –as mentioned– acted as a party in the procedure.¹⁰¹

⁹⁶ See <https://www.oas.org/en/iachr/media_center/PReleases/2016/104.asp>.

⁹⁷ In turn, the inter-American bodies have also been willing to engage with NGOs, and some (former) members of the monitoring bodies also have a clear NGO background: e.g., before becoming a Commissioner in the IACHR, Victor Abramovich was the Executive Director of CELS; José Zalaquett headed the Human Rights Department of the Chilean civil society organisation *Comite Pro Paz* (Committee for Peace) in Chile (the later *Vicaría de la Solidaridad*) and became chairman of Amnesty International's International Executive Committee and even AI Deputy Secretary-General after his exile from Chile, before becoming a Commissioner in the IACHR; Argentinian Juan Mendez launched Human Rights Watch's Americas Program (in 1982) and worked at Human Rights Watch for a further 15 years before becoming a Commissioner in the IACHR.

⁹⁸ E.g. Felipe Gonzalez, 'The Experience of the Inter-American Human Rights System' (2009) 40 VUWLR 103.

⁹⁹ E.g. Ximena Soley, 'The Crucial Role of Human Rights NGOs in the Inter-American System' (2019) 113 AJIL Unbound 357.

¹⁰⁰ See Monica Pinto, 'NGOs and the Inter-American Court of Human Rights', in Tullio Treves *et al.*, (eds), *Civil Society, International Courts and Compliance Bodies* (Asser Press 2005) 51; Enzamaría Tramontana, 'La Participación de las ONG en el Sistema Interamericano de Protección de los Derechos Humanos: Avances, Desafíos y Perspectivas', in Armin von Bogdandy, Eduardo Ferrer-MacGregor and Mariela Morales (eds), *La Justicia Constitucional y su Internacionalización* (Instituto de Investigaciones Jurídicas 2010) 540.

¹⁰¹ During this period, the representative of the victims could only participate directly in the reparations phase. See Viviana Krsticevic, 'El Papel de las ONG en el Sistema Interamericano de protección de los Derechos Humanos. Trámite de casos ante la Corte

· Participation as *amicus curiae* (from 1982 on)

Any person or institution can present an *amicus curiae* brief before the IACtHR (Article 44 ACHR). Such person or institution, which includes NGOs, must submit the brief by email (to tramite@corteidh.or.cr), indicating who submits it and their respective signature. The IACtHR has a robust history with *amicus curiae* briefs in the ambit of its contentious –and advisory (see also *supra*, sub 4.1.b) – jurisdiction. They are in this way helping the IACtHR in setting inter-American standards in human rights and rule of law issues.¹⁰²

According to Rivera, from 1982 until 2013 the Court received 500 *amicus* briefs in the ambit of its contentious jurisdiction.¹⁰³ In that regard *amicus* briefs have been submitted by a multitude of local, regional or global NGOs – and human rights institutes/legal clinics at US¹⁰⁴ and Latin-America-based universities,¹⁰⁵ as well as European universities,¹⁰⁶ acting as civil society actors – working in the ambit of human rights and the rule of law. Additionally, in the ambit of the Court's advisory jurisdiction, especially the past decade has seen an exponential increase in *amici curiae* submitted by NGOs, academic institutions and private individuals belonging to civil society. Indeed, during the period 2009–2020, the seven advisory opinions issued by the Court have attracted in total 293 *amici curiae*. The latest 2020 advisory opinion (on the denunciation of the American Convention and the OAS Charter led to 49 interventions,¹⁰⁷ while the 2014 advisory opinion on the environment attracted 44 *amicus* briefs.¹⁰⁸ The 2014 advisory opinion on migrant children led to 36 interventions,¹⁰⁹ while the advisory opinions on asylum (2018) and on the entitlement of legal entities to hold rights (2016) respectively attracted 33 *amici curiae*,¹¹⁰ and the 2009 Advisory Opinion concerning ad hoc judges led to 25 *amici curiae*.¹¹¹ However, it is the 2017 advisory opinion on gender identity, equality and non-discrimination concerning same-sex couples that led by far to the largest number of interventions, with no less than 73 *amici curiae*.¹¹² This is especially spectacular if one compares with

Interamericana de Derechos Humanos', in CIDH, *El Sistema interamericano de proteccion de los Derechos Humanos en el umbral del siglo XXI. Memoria del Seminario*, UNAM, 2001, 407–423.

¹⁰² For example, the 2009 Utrecht University *amicus* briefs aimed to assist the Court in setting a rule of law standard as to the effective judicial protection of persons once interim measures have been issued by the IACtHR (IACtHR, *Ríos et al v Venezuela*, Judgment 28 January 2009, para 19; IACtHR, *Perozo et al v Venezuela*, Judgment 28 January 2009, para 19); Essex University (IACtHR, *Reverón Trujillo v Venezuela*, Judgment 30 June 2009, para 9).

¹⁰³ Francisco Rivera Juaristi, 'The Amicus Curiae in the Inter-American Court of Human Rights (1982–2013)', in Yves Haecck, Oswaldo Ruiz Chiriboga and Clara Burbano Herrera (eds), *The Inter-American Court of Human Rights: Theory and Practice, Present and Future* (Intersentia 2015) 103–131. Also Monica Pinto, 'NGOs and the Inter-American Court of Human Rights', in Tullio Treves *et al.*, (eds), *Civil Society, International Courts and Compliance Bodies* (Asser Press 2005) 53–54; Enzamaría Tramontana, 'La Participación de las ONG en el Sistema Interamericano de Protección de los Derechos Humanos: Avances, Desafíos y Perspectivas', in Armin von Bogdandy, Eduardo Ferrer-MacGregor and Mariela Morales (eds), *La Justicia Constitucional y su Internacionalización* (Instituto de Investigaciones Jurídicas 2010) 547–549.

¹⁰⁴ E.g. University of Cincinnati, University of Denver, DePaul University, Harvard University, University of Boston (Monica Pinto, 'NGOs and the Inter-American Court of Human Rights', in Tullio Treves *et al.*, [eds], *Civil Society, International Courts and Compliance Bodies* [Asser Press 2005] 53); the University of Berkeley, Columbia University (Arturo J Carrillo, 'Bringing International Law Home: The Innovative Role of Human Rights Clinics in the Transnational Legal Process' [2004] 35[3] *Colum Hum Rts L Rev*, 527); the University of Ottawa (IACtHR, *Urrutia Laubreaux v Chile*, Judgment 27 August 2020, para 17); Georgetown University (IACtHR, *Indigenous Communities of the Lhaka Honhat Association v Argentina*, Judgment, 6 February 2020, para 9).

¹⁰⁵ E.g. Universidad Nacional Autónoma de México, Universidad San Francisco de Quito (Monica Pinto, 'NGOs and the Inter-American Court of Human Rights', in Tullio Treves *et al.*, [eds], *Civil Society, International Courts and Compliance Bodies* [Asser Press 2005] 53), University Sergio Arboleda (IACtHR, *Petro Urrego v Colombia*, Judgment 8 July 2020, para 11); Pontifical Catholic University of Peru (IACtHR, *Azul Rojas Marín et al v Peru*, Judgment 12 March 2020, para 11); University of Los Andes (*Olivares Muñoz et al v Venezuela*, Judgment 10 November 2020, para 11).

¹⁰⁶ E.g. Utrecht University (SIM) (IACtHR, *Ríos et al v Venezuela*, Judgment 28 January 2009, para 19; IACtHR, *Perozo et al v Venezuela*, Judgment 28 January 2009, para 19); Essex University (IACtHR, *Reverón Trujillo v Venezuela*, Judgment 30 June 2009, para 9); the University of Bergen (IACtHR, *Azul Rojas Marín et al v Peru*, Judgment 12 March 2020, para 11).

¹⁰⁷ IACtHR, *Denunciation of the American Convention on Human Rights and the Charter of the Organization of American States and the consequences for State human rights obligations*, Advisory Opinion OC-26/20, 9 November 2020: attracted 23 *amici curiae* from NGOs and academic institutions, and 26 *amici curiae* from individuals belonging to civil society.

¹⁰⁸ IACtHR, *The Environment and Human Rights (State obligations in relation to the environment in the context of the protection and guarantee of the rights to life and to personal integrity)*, Advisory Opinion OC-23/17, 15 November 2017.

¹⁰⁹ IACtHR, *Rights and guarantees of children in the context of migration and/or in need of international protection*, Advisory Opinion OC-21/14, 19 August 2014.

¹¹⁰ IACtHR, *The institution of asylum, and its recognition as a human right under the Inter-American System of Protection*, Advisory Opinion OC-25/18, 30 May 2018; IACtHR, *Entitlement of legal entities to hold rights under the Inter-American Human Rights System*, Advisory Opinion OC-22/16, 26 February 2016.

¹¹¹ IACtHR, *Article 55 of the American Convention on Human Rights*, Advisory Opinion OC-20/09, 29 September 2009.

¹¹² IACtHR, *Gender identity, and equality and non-discrimination with regard to same-sex couples. State obligations in relation to change of name, gender identity, and rights deriving from a relationship between same-sex couples*, Advisory Opinion OC-24/17, 24 November 2017.

the period immediately before 2009, which only saw 11, 12 and 5 interventions from NGOs, academic institutions and private individuals in three advisory opinions (in 2005, 2003 and 2002, respectively).¹¹³ This overall rising trend is only partially due to the a higher number of NGOs (and private individuals) intervening in the proceedings, but has also to do with the rising interest of (private and public) academic institutions, often through their legal clinics, to act as *amici curiae*. One also notices a growing diversity in NGOs intervening during the advisory proceedings before the Court as well as an increase in national NGOs,¹¹⁴ coupled with a decrease in interventions from usual international/regional suspects such as CEJIL (no intervention during the past five advisory proceedings) or Amnesty International (only one intervention during the past five advisory proceedings).

• Direct participation as representative (from 2001 on)

The Rules of Procedure of the Court and the Commission were reformed in 2001. This reform was very important from the perspective of the representative's participation, which were frequently NGOs. Following the referral of a case to the Court, the representative of the presumed victim(s) received the power to participate as a party before the Court. Nowadays, the representative and the victims may submit their own pleadings, motions and evidence,¹¹⁵ and can act autonomously throughout the Court proceedings.¹¹⁶ Moreover, the role of the Commission changed in 2009 (and in 2013) following another reform. Currently, the Commission's role is more related to be the 'guardian' of the ACHR. In this context, during the procedure before the Court, there are currently two parties, namely the representatives of the victim(s) and the state concerned, while the Commission can submit its observations to the Court. Besides, NGOs are also actively requesting provisional measures before the IACtHR (under Article 63[2] ACHR) to protect the alleged victim at risk, for example, against arbitrary interferences by the executive.¹¹⁷

The contentious procedure before the IACtHR does not finish with the judgment. According to the Court, a case only finishes when the state concerned complies with all the reparation orders issued by the Court in its judgment. So, after a judgment is rendered, a new procedure of monitoring of compliance, implemented by the Court starts. In this stage, the Court receives reports of compliance prepared by the state and observations on those reports submitted by the representatives of the victim(s) and the Commission. In this phase, public and private hearings usually take place during which NGOs acting as representatives, inform the Court about the compliance, but they also provide suggestions on how compliance could be improved. Being close to the victims and their relatives, and possessing all the information to examine the compliance with the Court's judgments, national NGOs –sometimes teaming up with regional NGOs– have been actively involved in the supervision of the compliance by states with the IACtHR judgments.

5. Other domestic and regional activities

NGOs litigation work in the IAHRS has been combined with a multiplicity of other activities at the national and regional level. NGOs are active in offering training of human rights, including rule of law standards to diverse actors, they carry-out extensive information campaigns on social media, they conduct research, elaborate and disseminate reports related to concrete cases and with respect to more general standards developed at the inter-American human rights level. They also propose concrete policy solutions related to specific problems. The *DPLF* and *Washington Office on Latin America* (WOLA) offer good examples of the

¹¹³ IACtHR, *The institution of asylum, and its recognition as a human right under the Inter-American System of Protection*, Advisory Opinion OC-25/18, 30 May 2018; IACtHR, *Entitlement of legal entities to hold rights under the Inter-American Human Rights System*, Advisory Opinion OC-22/16, 26 February 2016.

¹¹⁴ This seems to confirm the trend of diversification of the general NGO landscape in Latin-America referred to by Abregu. Martin Abregu, 'Human Rights for All: From the Struggle Against Authoritarianism to the Construction of an All-inclusive Democracy. A View for the Southern Cone and Andean Region' (2008) 8 Sur. International Journal of Human Rights 7.

¹¹⁵ In addition, the Inter-American Defender has been established to represent victims who have the benefit of legal assistance.

¹¹⁶ With the reform of the Commission's Rules of Procedure in 2009, the Commission is no party anymore to the proceedings before the Court. The Commission cannot submit evidence, witnesses, or request declarations of the presumed victims. During the hearings, the interrogations can only be conducted by the representative of the victims and the state concerned. The Commission may request the Court to summon expert witnesses. See Commission Rules of Procedure, Art 72.

¹¹⁷ E.g. IACtHR, *Integrantes del Equipo de Estudios Comunitarios y Accion Psicosocial (ECAP) Masacre Plan De Sanchez v Guatemala*, Order 20 November 2006, request submitted by the *Centro para la Acción Legal en Derechos Humanos* (Center for Legal Action in Human Rights) (CALDH). Also Clara Burbano Herrera, *Provisional Measures in the Case Law of the Inter-American Court of Human Rights* (Intersentia 2010) 22–23.

several activities in which NGOs are involved in the region.¹¹⁸ Established in 1974, the grassroots organisation WOLA is a leading research and advocacy NGO with the goal of advancing human rights in the Americas, with programmes in Central America, Colombia, Cuba, Mexico, Venezuela, and conducting research and advocacy on topics related to citizen security, defense oversight, drug policy reform and migration and border security. Both NGOs publish reports, write opinions in newspapers, organize meetings with experts and present findings before the IACHR.¹¹⁹ In the current crisis in Colombia related to violence against protestors,¹²⁰ NGOs such as *Dejusticia* have also played an important role. This NGO has supported the visit of the IACHR to Colombia which took place between 7 and 11 June 2021, has informed the Commissioners about the situation of danger and it has informed the national and international community about the human rights violations occurring in the country, among others.¹²¹

6. Some final remarks

The rule of law is a well-established principle also in the America's, which has a direct impact on the life of every citizen. No democracy can function without independent courts, parliamentarians and executive guaranteeing the protection of fundamental rights, nor without an active civil society. When considering the past Latin-American context characterized by dictatorships and present fragile democracies with structural problems related to intense repression, violence and impunity, human rights NGOs, mostly established by victims (or family members) of repressive regimes or at least because of the victims, have played a significant role in fighting these regimes and seeking respect for human rights, democracy and the rule of law.

National or regional human rights NGOs or networks of NGOs have played a fundamental role with the inter-American monitoring bodies in terms of documenting violations, disseminating info in that regard, standard-setting, bringing justice to victims of human rights violations and violations of the rule of law through bringing cases, and in terms of supervising the compliance of the judgments or provisional measures of the Court and recommendations of the Commission, in terms of informing and training civil society about the international human rights standards, and also in terms of denouncing at the international community about human rights violations occurring at the domestic level. In our opinion both the IACHR and the IACtHR have contributed in an extraordinary manner to the development of human rights standards in the region. The inter-American Human Rights system was created in a period where most states were ruled by military dictatorships and repressive regimes. In this context the inter-American human rights organs have gained legitimacy thanks to their constant work and their openness towards NGOs and civil society.

When looking at the present-day statistics as to petitions filed with the Commission, it remains, however, a fact that the engagement of NGOs and civil society as whole with the inter-American system is mostly restricted to Latin-American countries, the United States and Canada, while English-speaking Caribbean countries are not often being targeted. This is most probably due to a less strong or at least less interested civil society in the inter-American human rights system, as well as – making abstraction of a single Jamaican former judge on the Inter-American Court, who is presently a Commissioner – the conspicuous absence of leading Caribbean figures within today's inter-American system.

Overall, the role of NGOs has responded to the political and social context of the American continent and has evolved with the passing of time. The role of NGOs has been supported under the inter-American legal framework and through the broad interpretation that the Commission and Court have given to their own rules. Originally, NGOs played an important role in providing relevant information, among others during on-site visits of the IACHR, which was in turn quintessential for the elaboration of so-called country reports prepared by the Commission with respect to states with massive and systematic violations of human rights, and today, NGOs are still fulfilling this role. Subsequently, NGOs have brought and are increasingly trying to bring justice to victims of human rights violations. NGOs have taken up this role through the litigation of individual cases. On many cases, NGOs have acted as representatives of the victims and their relatives. In this area, NGOs have taken advantage of the wide definition of the *locus standi* incorporated in Article 44 of the American Convention. In 63% of the cases in which the IACtHR has rendered a judgment on the merits in 2020, in total 19 NGOs –both national and/or regional NGOs (two as repeat players)– have acted

¹¹⁸ See <<https://www.wola.org/about-us>> and <<http://www.dplf.org>>.

¹¹⁹ Patrick W Kelly, *Sovereign Emergencies. Latin America and the Making of Global Human Rights Politics* (CUP 2018) 184–190.

¹²⁰ See Kelis Moreno, 'Colombia: From Hope to Chaos' (Blogpost Human Rights in Context, 16 May 2021) <<https://www.humanrightsincontext.be/post/colombia-from-hope-to-chaos>>.

¹²¹ See <<https://www.dejusticia.org>> and <<https://www.dejusticia.org/pedimos-que-se-transparente-el-espacio-que-tendra-la-cidh-con-organos-de-control>>.

as representatives –sometimes together with other NGOs or independent lawyers– of the alleged victims. Only in 7 cases (37% of cases) NGOs have not acted as legal representatives.¹²²

A characteristic of the litigation role of human rights NGOs in the Americas is that they have focused their litigation on cases in which victims and their relatives themselves are not in a position to act before the IAHRs, for example due to factors related to poverty. Moreover, NGOs have focused their work on ‘strategic litigation,’ in the sense that they have brought to the IAHRs emblematic cases that deal with situations affecting a large number of people that show structural problems in a specific state. In this context, NGOs have submitted cases related to massacres, torture and impunity created by amnesty laws, cases related to discrimination against indigenous people, cases related to domestic violence, cases that show the deplorable conditions in which detainees are kept in some prisons and violence against children, access to independent and impartial judicial organs, among others. NGOs aim to seek justice for the specific victim(s), but also to promote changes within the domestic legal system to avoid the repetition of the violations, for instance through reforms of domestic legislation or practice, making them rule of law proof. Over the years, NGOs in the Americas have addressed problems that attack the rule of law, namely violence, discrimination, corruption, censorship, unfair trials, the refugee crises, among others.

NGOs have an important knowledge of international human rights standards, and they have accordingly, either *ad hoc* or gradually in a more strategic way, engaged with the IAHRs to make a contribution for the protection of human rights and the principle of rule of law. This has for example happened through assisting the Court in setting new inter-American standards in its case law by acting as *amici curiae*. In 2020 *amici curiae* briefs have been submitted in 42% (8 cases) of all cases (19 cases) in which the IACtHR has issued a judgment on the merits. In total 26 NGOs and 17 universities have submitted no less than 49 *amicus* briefs in contentious cases.¹²³

Unfortunately, over the past years, the work of NGO members is gradually becoming more and more dangerous, as human rights defenders are increasingly facing threats, harassment, detention, unfair trials and have even been the victim of summary executions or extrajudicial killings. According to Frontline Defenders more than 300 human rights defenders were killed in 31 countries in 2019 and two-thirds of the killings took place in Latin America, where Colombia was the bloodiest country with almost 40% of these killings (107 out of 300 murders).¹²⁴ The latter means that almost every 72 hours, one human rights defender – often an NGO or civil society member, was killed in the country concerned.

Competing Interests

The authors have no competing interests to declare.

¹²² Info collected and systematised by the authors.

¹²³ *ibid.*

¹²⁴ Front Line Defenders, 2019 Report, <<https://www.frontlinedefenders.org/en/news/more-300-human-rights-activists-were-killed-2019-report-reveals>>.

How to cite this article: Clara Burbano Herrera and Yves Haeck, ‘The Historical and Present-Day Role of Non-Governmental Organisations before the Inter-American Human Rights System in Documenting Serious Human Rights Violations and Protecting Human Rights and the Rule of Law Through Ensuring Accountability’ (2021) 17(2) Utrecht Law Review pp. 8–24. DOI: <https://doi.org/10.36633/ulr.672>

Published: 07 October 2021

Copyright: © 2021 The Author(s). This is an open-access article distributed under the terms of the Creative Commons Attribution 4.0 International License (CC-BY 4.0), which permits unrestricted use, distribution, and reproduction in any medium, provided the original author and source are credited. See <http://creativecommons.org/licenses/by/4.0/>.



Utrecht Law Review is a peer-reviewed open access journal published by Utrecht University School of Law.

OPEN ACCESS