

Brooklyn Journal of International Law

Volume 36

Issue 3

SYMPOSIUM:

Governing Civil Society: NGO Accountability,
Legitimacy and Influence

Article 5

2011

NGO Standing and Influence in Regional Human Rights Courts and Commissions

Lloyd Hitoshi Mayer

Follow this and additional works at: <https://brooklynworks.brooklaw.edu/bjil>

Recommended Citation

Lloyd H. Mayer, *NGO Standing and Influence in Regional Human Rights Courts and Commissions*, 36 *Brook. J. Int'l L.* (2011).
Available at: <https://brooklynworks.brooklaw.edu/bjil/vol36/iss3/5>

This Article is brought to you for free and open access by the Law Journals at BrooklynWorks. It has been accepted for inclusion in Brooklyn Journal of International Law by an authorized editor of BrooklynWorks.

NGO STANDING AND INFLUENCE IN REGIONAL HUMAN RIGHTS COURTS AND COMMISSIONS

*Lloyd Hitoshi Mayer**

INTRODUCTION

Nongovernmental organizations (“NGOs”) are well-known actors in the development and implementation of international human rights law.¹ Nevertheless, how exactly they are involved in various human rights institutions has only occasionally been studied, and then often with a focus on the broad sweep of NGO involvement across many international bodies rather than with a deeper focus on involvement in particular types of international human rights entities.² This Article seeks to take a first step toward filling that gap by considering how NGOs both can be and are involved in proceedings before the major regional human rights enforcement systems.

For purposes of this Article, the term NGO is defined using three of the five characteristics identified by Lester M. Salamon and Helmut K. Anheier. Those characteristics are: “(a) formally constituted; (b) organizationally separate from government; [and] (c) non-profit-seeking.”³ These characteristics distinguish NGOs from other common types of organizations, specifically governmental bodies, businesses, and informal entities such as families and households.⁴ The other two characteristics Salamon and Anheier identify—“self-governing” and “voluntary to some significant degree”⁵—are not used because, while these two characteristics are commonly associated with NGOs in the popular understanding of

* Professor, Notre Dame Law School. I am very grateful for comments from my fellow symposium participants, the research assistance of Duy Nguyen and Gregory Ramsower, and the hosting of this symposium by the Dennis J. Block Center for the Study of International Business Law and the *Brooklyn Journal of International Law*.

1. See, e.g., Felix Ermacora, *Non-governmental Organizations as Promoters of Human Rights*, in PROTECTING HUMAN RIGHTS: THE EUROPEAN DIMENSION 171, 173–74 (Franz Matscher & Herbert Petzold eds., 2d ed. 1990) (listing seven categories of NGO activities relating to human rights).

2. For an example of a more focused, although now dated, study, see Dinah Shelton, *The Participation of Nongovernmental Organizations in International Judicial Proceedings*, 88 AM. J. INT’L L. 611 (1994).

3. LESTER M. SALAMON & HELMUT K. ANHEIER, THE EMERGING NONPROFIT SECTOR: AN OVERVIEW xvii–xviii (John Hopkins Nonprofit Sector Ser. No. 1, 1996).

4. See JON VAN TIL, GROWING CIVIL SOCIETY: FROM NONPROFIT SECTOR TO THIRD SPACE 20–21 (2000).

5. SALAMON & ANHEIER, *supra* note 3, at xviii.

that term, they are not necessary to distinguish NGOs from the other common types of organizations listed above.

The human rights enforcement systems considered in the Article are for Europe, the Americas, and Africa. All three of these regional systems have at one time or another used the dual institutions of a commission and a separate court. The European system moved to a court-only system a little over ten years ago, however, and the African system has only recently had its court begin operations.⁶ But to the extent that both institutions functioned in each of the systems during the time period under consideration, the role of NGOs are reviewed with respect to not only the courts but also the commissions.

The focus of this inquiry is on decisions or judgments on the merits.⁷ These decisions are in many ways only the tip of the iceberg in that most applications filed with the commissions and courts are resolved short of such a decision, usually either by a determination that the application does not satisfy the criteria for admissibility—such as exhaustion of domestic remedies⁸—or through a settlement. NGOs also are involved with these bodies in a number of ways other than through participating in actual cases.⁹ Nevertheless, there are two reasons for this focus on decisions on the merits. First, the impact of NGOs on the development of international human rights law is arguably strongest when they are involved in decisions on the merits that resolve not only the specific violations alleged in a given case but also interpret and develop that law. Second, the decisions on the merits are one of the most visible outputs of these human rights enforcement systems.¹⁰

6. See *infra* nn. 27, 54 and accompanying text.

7. While the various bodies use different labels for such decisions, for the sake of clarity, this Article will refer to all decisions, judgments, or other determinations regarding whether a member state has, or has not, violated the relevant human rights laws as “decisions on the merits.”

8. See *infra* nn. 34, 46, and 56, and accompanying text.

9. See, e.g., EVELYN A. ANKUMAH, *THE AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS: PRACTICE AND PROCEDURES 2* (1996) (describing efforts by NGOs “to make the [African] Commission more accessible”); *id.* at 186 (describing other ways NGOs are permitted to be involved in African Commission activities); RACHEL MURRAY, *THE AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS AND INTERNATIONAL LAW* 88 (2000) (describing other ways NGOs are permitted to be involved in African Commission activities); Nina Vajic, *Some Concluding Remarks on NGOs and the European Court of Human Rights*, in *CIVIL SOCIETY, INTERNATIONAL COURTS AND COMPLIANCE BODIES* 93, 96–97 (Tullio Treves et al. eds., 2005) [hereinafter *CIVIL SOCIETY*] (describing efforts by NGOs to further human rights in Europe).

10. See ANKUMAH, *supra* note 9, at 1–2 (noting the limited availability of public information about the activities of the African Commission).

Part I of this Article considers how NGOs can be involved under the existing conventions or charters that govern the operation of these systems. Consideration of these documents reveals that in each system NGOs are able to serve in a variety of roles, including as applicants, as representatives of the alleged victims, and as third parties serving in an *amicus curiae* or intervener role, although there are some variations.¹¹ The most important variation is that in the Americas, which use a dual commission/court structure, the ability to serve in these multiple roles is initially only with respect to the commission, with the court only considering matters referred to it by the commission.¹² In this system, the commission therefore serves a gate-keeping function, including with respect to cases in which NGOs are involved. However, NGOs involved at the commission stage often are also involved at the court stage, if it occurs in a given case.¹³ In the African system, NGOs may bring cases before the commission, and NGOs that have received “observer” status before the commission may bring cases before the court.¹⁴

Part II considers how NGOs can be involved in these systems by looking at all decisions on the merits rendered during the ten-year period from 2000 through 2009. Consideration of these decisions reveals both striking similarities and differences. The most significant similarity is that NGO involvement is primarily in the form of serving as representatives of alleged victims of human rights violations. The most significant differences are that NGO involvement in the European system is concentrated both with respect to the member states and the specific NGOs involved and occurs only in a relatively small proportion of the decisions.¹⁵ In contrast, in the Inter-American system, NGOs are involved in a much higher proportion of the decisions, and while there are concentrations with respect to the specific NGOs, there are less apparent concentrations with respect to member states. Finally, in the African system, there is also a high proportion of NGO involvement but no obvious concentrations either with respect to the specific NGOs or member states involved.

11. While the parties bringing allegations of human rights violations are identified by different labels by the various bodies considered in this Article, for the sake of clarity this Article shall refer to all such parties as “applicants.”

12. See *infra* note 42 and accompanying text.

13. See *infra* note 48 and accompanying text.

14. See *infra* note 60 and accompanying text.

15. While the three systems use different labels for countries that have consented to be subject to such systems, and the degree of that consent can vary, for the sake of simplicity and because it does not impact the analysis that is the focus of this Article, all countries that have agreed to be subject to these systems such that decisions on the merits can be rendered against them will be referred to as “member states” with respect to the relevant system.

Part III then considers the ramifications of the permitted and actual degree of NGO involvement in these systems. One ramification is the importance of NGOs as representatives of alleged victims of human rights violations, although that importance varies as between the different systems. Variations may arise from a number of factors, including the availability of legal aid (or lack thereof) and the size and relative strength of the legal bar in member states. Another ramification is that in Europe, the role of NGOs appears primarily to draw attention to human rights violations in a relatively narrow set of member states where conditions for private representation of alleged victims may not exist, while in the Americas and Africa, it appears that there is a broader need for NGOs to represent alleged victims from a broad swath of the member states. These ramifications suggest that the development and support of human rights NGOs should perhaps be targeted in different ways in these different systems. Finally, both the relatively close ties between the most active NGOs and the larger international human rights community and the relative open access of not only NGOs but private parties of all types to these systems suggests that there is no need to carefully screen NGOs before they can become involved, as has been done at least to some extent for the African court. This approach contrasts with that taken with respect to many other international bodies, as others have discussed in this Symposium, where NGOs often have privileged access to deliberations and discussions as compared to other private parties.¹⁶

I. NGO INVOLVEMENT IN THEORY

Each court has its own procedural rules that govern what entities may formally appear before the commissions and courts and in what capacities. Individuals and groups who are not able to take advantage of these formal avenues of participation may still be able to influence the court through other means, such as by urging entities to exercise the right to appear or by encouraging member states to alter the rules or judicial composition of the commissions and courts. Such indirect means are, however, necessarily filtered by the other entities involved, making it difficult to determine how much influence NGOs actually have through these avenues. Such indirect means are also much more difficult to identify. For these reasons, the focus here is on the extent to which NGOs

16. See generally Shamima Ahmed, *NGOs Impact on International Organizations: Complexities and Considerations*, 36 BROOK. J. INT'L L. 817 (2011); Dana Brakman Reiser & Claire R. Kelly, *Linking NGO Accountability and the Legitimacy of Global Governance*, 36 BROOK. J. INT'L L. 1011 (2011).

may themselves come before the courts and, where applicable, related commissions.

A. European Court of Human Rights

When initially created in 1959, under what is commonly known as the European Convention on Human Rights (the “European Convention”), individuals and private groups, including NGOs, did not have the right to appear before the European Court of Human Rights (the “ECHR”).¹⁷ However, with the agreement of the applicable member states, individuals and groups, including NGOs, could file complaints with the European Commission of Human Rights (the “European Commission”), claiming a violation by one of the member states of his, her, or its rights as set forth in the European Convention.¹⁸ The European Commission could in turn bring cases to the ECHR if it deemed the complaint admissible and irresolvable by friendly settlement.¹⁹ The European Commission generally exercised this option if it viewed the case as involving “an important question of interpretation of the [European] Convention.”²⁰ Even in instances where the European Commission brought such cases, the Commission was the party before the ECHR, not the individual or group that had filed the complaint, although the ECHR eventually provided an opportunity for the original complainant to participate through the ECHR’s procedural rules.²¹

Individuals and groups, including NGOs, also had the ability from at least 1989 forward to ask the President of the ECHR for the opportunity to intervene in any given case, which opportunity would be granted if doing so would be in the “interest of the proper administration of justice.”²² Over time, the President granted such opportunities to both individuals and NGOs in a number of cases.²³ Individuals and groups, in-

17. Convention for the Protection of Human Rights and Fundamental Freedoms, art. 44, Nov. 4, 1950, 213 U.N.T.S. 221 [hereinafter Original European Convention].

18. *Id.* art. 25(1); DONNA GOMIEN ET AL., LAW AND PRACTICE OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS AND THE EUROPEAN SOCIAL CHARTER 42 (1996); ANNA-KARIN LINDBLOM, NON-GOVERNMENTAL ORGANISATIONS IN INTERNATIONAL LAW 246 (2005).

19. GOMIEN, *supra* note 18, at 73; *see also* Original European Convention, *supra* note 17, art. 48(a).

20. GOMIEN, *supra* note 18, at 73.

21. GOMIEN, *supra* note 18, at 79–80; LINDBLOM, *supra* note 18; Shelton, *supra* note 2, at 630.

22. GOMIEN, *supra* note 18, at 80; LINDBLOM, *supra* note 18, at 329.

23. Abdelsalam A. Mohamed, *Individual and NGO Participation in Human Rights Litigation Before the African Court of Human and Peoples’ Rights: Lessons from the*

cluding NGOs, also had the ability from 1994 forward to ask the ECHR to consider their complaint after the European Commission had issued a report even without a referral by the Commission, but the ECHR could decline to do so if a three-judge panel of the ECHR concluded that there was not a sufficient reason to consider the case.²⁴ Even given these various avenues for participation before 1998, it appears NGOs participated in only several dozen cases in total.²⁵ This compares to over a thousand ECHR judgments on the merits between 1959 and 1998, when Protocol 11 to the European Convention came into effect.²⁶

When Protocol 11 went into effect in 1998, it eliminated the European Commission but, at the same time, greatly expanded the entities that had a right to bring a case before the ECHR.²⁷ More specifically, Protocol 11 amended Article 34 of the European Convention to provide that “[t]he Court may receive [individual] applications from any person, non-governmental organisation [sic] or group of individuals claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention or the protocols thereto.”²⁸ Protocol 11 also amended Article 36 of the European Convention to maintain the authority of the President to invite other persons to appear before the court in a given case if doing so is in the interest of the proper administration of justice.²⁹ While a new protocol that went into effect in 2010 signifi-

European and Inter-American Courts of Human Rights, 43 J. AFR. L. 201, 207–08 (1999).

24. Protocol No. 9 to the Convention for the Protection of Human Rights and Fundamental Freedoms art. 5 ¶¶ 1(e)–2, Nov. 6, 1990, E.T.S. No. 140, *repealed by* Protocol No. 11 to the Convention for the Protection of Human Rights and Fundamental Freedoms, May 11, 1994, E.T.S. No. 155; GOMIEN, *supra* note 18, at 74; LINDBLOM, *supra* note 18, at 246.

25. *See, e.g.*, LINDBLOM, *supra* note 18, at 330 (finding that NGOs filed *amicus curiae* briefs in “at least” thirty-six cases from 1969 to Sept. 30, 1998); *see also* Shelton, *supra* note 2, at 632 (as of 1994, describing the ECHR’s track record with respect to accepting third-party participation in cases).

26. *See* LINDBLOM, *supra* note 18, at 253.

27. Protocol No. 11 to the Convention for the Protection of Human Rights and Fundamental Freedoms, May 11, 1994, E.T.S. No. 155 [hereinafter Protocol 11]; *see also* GOMIEN, *supra* note 18, at 91; LINDBLOM, *supra* note 18, at 247.

28. Protocol 11, *supra* note 27, art. 34; Convention for the Protection of Human Rights and Fundamental Freedoms, art. 34, Nov. 4, 1950, 213 U.N.T.S. 221, *amended by* Protocol 11, *supra* note 27, and Protocol No. 14 to the Convention for the Protection of Human Rights and Fundamental Freedoms, May 13, 2004, C.E.T.S. 194 [hereinafter Amended European Convention].

29. Protocol 11, *supra* note 27, art. 36; Amended European Convention, *supra* note 28, art. 36(2).

cantly altered the ECHR's procedures, the protocol did not change these avenues for NGO participation in cases before the Court.³⁰

As the language of current Article 34 of the European Convention indicates, an NGO that wants to appear as an applicant before the ECHR must satisfy the same requirements as any other type of person seeking to make such an appearance, i.e., it must have a claim that it has been the victim of a violation by a member state of the rights set forth in the European Convention.³¹ It is apparently not sufficient that the rights of the group of individuals which the NGO represents have been violated; to meet this requirement it must be the rights of the NGO itself that have been violated.³² The ECHR has not fully determined what rights set forth in the European Convention actually apply to NGOs, but assuming an NGO can claim to be a victim of a violation of an applicable right,³³ it clearly may bring a case before the ECHR if it meets the other threshold requirements, such as exhausting domestic remedies.³⁴ To appear at the invitation of the President in a given case, the President must determine that such an invitation to an NGO, like an invitation to any other entity, is "in the interest of the proper administration of justice."³⁵ NGOs therefore do not have any avenues for appearing before the ECHR that are not common to other types of entities. Not all NGOs may take advantage of these avenues, however. It appears that only NGOs legally established within one of the member states generally qualify, although there have been exceptions when the entity's lack of formal legal establishment is related to its rights violation claim.³⁶

The expansion of what entities can be claimants before the ECHR also provides another potential avenue for NGO participation in ECHR cases: serving as the representative of such entities, which could include both individuals and groups claiming to be victims of a violation by a member

30. Protocol No. 14 to the Convention for the Protection of Human Rights and Fundamental Freedoms, May 13, 2004, C.E.T.S. 194; THEORY AND PRACTICE OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS 36–37 (Pieter van Dijk et al. eds., 4th ed. 2006) [hereinafter THEORY AND PRACTICE].

31. Amended European Convention, *supra* note 28, art. 34; LINDBLÖM, *supra* note 18, at 252.

32. Marco Frigessi di Rattalma, *NGOs before the European Court of Human Rights: Beyond Amicus Curiae Participation?*, in CIVIL SOCIETY, *supra* note 9, at 57, 60.

33. See THEORY AND PRACTICE, *supra* note 30, at 53–55 (discussing which rights have been found excisable by a legal, as well as by a natural, person).

34. Amended European Convention, *supra* note 28, art. 35(1).

35. *Id.* art. 36(2); Rules of the Court, 2010 Eur. Ct. H.R., R. 44(3)(a) [hereinafter ECHR Rules].

36. See LINDBLÖM, *supra* note 18, at 247–51.

state of the rights set forth in the European Convention.³⁷ While the fees for representatives are generally paid by the defendant member state if the alleged victim is successful in his or her claim, NGOs (and other representatives) may also be paid for their services through a legal aid system established by the Council of Europe “for applicants who do not have sufficient means.”³⁸ However, at least one prominent human rights organization that is active before the ECHR has complained that the legal aid payments are “very low.”³⁹ As discussed in the next Part, serving as a representative has become the primary way NGOs come before the ECHR.

B. Inter-American Human Rights Commission and Inter-American Court of Human Rights

Similar to the initial structure of the European human rights system, the Inter-American system contains both the Inter-American Commission on Human Rights (the “Inter-American Commission”) and the Inter-American Court of Human Rights (the “IACHR”). Unlike the European system, however, the Inter-American system began with only the Inter-American Commission in 1959, formed under the American Declaration of the Rights and Duties of Man (the “Declaration”), although it was later incorporated into the Charter of the Organization of American States and the subsequent American Convention on Human Rights (the “American Convention”).⁴⁰ It was not until the American Convention entered into effect in 1979 that the IACHR came into existence.⁴¹ Also unlike the

37. See Ermacora, *supra* note 1, at 177 (prior to Protocol 11, NGOs could serve as counsel to European Commission applicants).

38. *Basic Information on Procedures* § 1(3), EUR. CT. H.R. <http://www.echr.coe.int/echr/en/header/the+court/how+the+court+works/procedure+before+the+court> (last visited May 22, 2011).

39. *Taking a Case to the European Court of Human Rights*, LIBERTY <http://www.yourrights.org.uk/yourrights/the-human-rights-act/taking-a-case-to-the-european-court-of-human-rights.html> (last updated Aug. 18, 2008) [hereinafter *Taking a Case to the European Court of Human Rights*].

40. American Convention on Human Rights pmb., art. 33(a), Nov. 22, 1969, 1144 U.N.T.S. 123 [hereinafter *American Convention*]; SCOTT DAVIDSON, *THE INTER-AMERICAN HUMAN RIGHTS SYSTEM* 15–16, 99 (1997); see also Charter of the Organization of American States, art. 53(e), Apr. 30, 1948, 119 U.N.T.S. 3. The United States is a party to the Declaration and so is subject to the jurisdiction of the Inter-American Commission. However, the U.S. has not ratified the American Convention and so is not subject to the jurisdiction of the IACHR. See *B-32: American Convention on Human Rights*, INTER-AM. COMM’N H.R., <http://www.cidh.oas.org/Basicos/English/Basic4.Amer.Conv.Ratif.htm> (last visited Jan. 24, 2011) (showing that the United States has not ratified the Convention).

41. See American Convention, *supra* note 40, arts. 52–69.

European system, the Inter-American system continues to this day to have this two-part structure.

Only member states or the Inter-American Commission may bring cases directly to the IACHR.⁴² All others alleging violations of the American Convention, including NGOs, must bring their complaints to the Inter-American Commission instead. More specifically, Article 44 of the American Convention permits “[a]ny person or group of persons, or any nongovernmental entity legally recognized in one or more member states” to file a petition with the Inter-American Commission.⁴³ In contrast to the European system, the person filing the petition need not be the victim of the alleged American Convention violation; instead, the filer may assert a claim on behalf of any specific victim.⁴⁴ The fact that the NGO filing a petition need only be organized in any member state and not necessarily in the member state where the alleged violation occurred, also means NGOs that are relatively insulated from retaliation by the member state involved could bring a claim on behalf of residents of that member state, if those residents could be identified with sufficient specificity.⁴⁵ In addition, the petition must meet certain threshold requirements, including exhaustion of domestic remedies.⁴⁶

NGOs also have at least two other avenues for participation in cases before the Inter-American Commission and the IACHR. First, NGOs may serve as representatives of other petitioners before the Inter-American Commission.⁴⁷ If the Inter-American Commission then refers the petition to the IACHR, which is generally required if the member state has not complied with the Commission’s final recommendations within a certain time period, the IACHR’s Rules of Procedure permit the autonomous submission of pleadings, motions, and evidence by not only

42. DAVIDSON, *supra* note 40, at 138.

43. American Convention, *supra* note 40, art. 44; DAVIDSON, *supra* note 40, at 156 (States that are party to the Convention have no ability to deny this right of petition as against them); *see also* Statute of the Inter-American Commission on Human Rights, art. 19(a), Oct. 1979, O.A.S.T.S. Res. 447 (IX-0/79), O.A.S. Off. Rec. OEA/Ser.P/IX.0.2/80.

44. American Convention, *supra* note 40, art. 44; DAVIDSON, *supra* note 40, at 157; LINDBLOM, *supra* note 18, at 271–72.

45. *See* DAVIDSON, *supra* note 40, at 157. For purposes of this Article, NGOs filing claims on behalf of others are classified as “representatives” of the alleged victims even if the NGOs are acting without a formal relationship with or consent from the alleged victims.

46. American Convention, *supra* note 40, arts. 46–47.

47. R. P. Inter-Am. Ct. H.R. 2(26), 25(1) [hereinafter IACHR Rules]; R. P. Inter-Am. Comm’n H.R. 23.

the alleged victims, but also their “duly accredited representatives.”⁴⁸ Neither the Commission nor the IACHR appears to have a legal aid system in place to help petitioners who lack the financial means to hire representatives.⁴⁹ Second, those rules also provide for *amicus curiae* briefs before the IACHR.⁵⁰ The Inter-American Commission has also permitted such briefs on occasion, although there does not appear to be a clear legal basis for doing so.⁵¹

Given the breadth of Article 44 of the Convention, there has been little if any need for either the Inter-American Commission or the IACHR to develop a definition of the term NGO. The only significant limitation is that under Article 44, an NGO filing a petition before the Inter-American Commission must be legally recognized by one or more member states.⁵² In practice, this requirement does not appear to have been a significant barrier for NGO involvement, presumably because it is the NGOs formed under the laws of one of the member states that are interested in bringing alleged violations of the American Convention to the attention of the Inter-American Commission.

C. African Commission on Human and Peoples' Rights and African Court on Human and Peoples' Rights

The current African human rights system also operates under a dual commission/court structure. The African Commission on Human and Peoples' Rights (the “African Commission”) began operations in 1987 under the auspices of Article 30 of the African Charter on Human and Peoples' Rights (the “African Charter”).⁵³ The Protocol to the African Charter (the “Protocol”), which entered into force in 2004, created the

48. IACHR Rules, *supra* note 47, 2(26), 25(1); R. P. Inter-Am. Comm'n H.R. 45(1); Tara J. Melish, *The Inter-American Court of Human Rights: Beyond Progressivity*, in *SOCIAL RIGHTS JURISPRUDENCE: EMERGING TRENDS IN INTERNATIONAL AND COMPARATIVE LAW* 372, 378–79 (Malcolm Langford ed., 2008) [hereinafter *SOCIAL RIGHTS JURISPRUDENCE*]; DAVIDSON, *supra* note 40, at 204 (describing the referral process).

49. Melish, *supra* note 48, at 380–81.

50. IACHR Rules, *supra* note 47, 44; *see also* LINDBLOM, *supra* note 18, at 355–56 (discussing how, even before enactment of this rule, NGOs successfully submitted *amicus curiae* briefs in a number of IACHR cases); *see also* Shelton, *supra* note 2, at 638 (“the [IACHR] appears never to have rejected an amicus filing”).

51. LINDBLOM, *supra* note 18, at 355.

52. American Convention, *supra* note 40, art. 44.

53. Afr. Charter on Hum. & Peoples' Rts., art. 30, June 27, 1981, 21 I.L.M. 58 (1982) [hereinafter *African Charter*]; *History*, AFR. COMM'N HUM. & PEOPLES' RTS., http://www.achpr.org/english/_info/history_en.html (last visited Jan. 24, 2011).

African Court on Human and Peoples' Rights (the "ACHPR").⁵⁴ The African Union has, however, determined that the ACHPR should be merged into the African Court for Justice, although the latter court has yet to begin operations so it not clear if and when that merger will actually occur.⁵⁵

An application relating to the rights referred to in the African Charter will be considered by the African Commission if certain threshold requirements are met, including the exhaustion of local remedies (unless it is obvious that local procedures are unduly prolonged) and approval by a majority of the African Commission's members.⁵⁶ It appears that any individual or entity, including an NGO, may submit such an application to the African Commission either on its own behalf or on behalf of someone else.⁵⁷ A party submitting such an application may have legal representation, and there does not appear to be any restriction that would prevent an NGO from serving in that role.⁵⁸ Finally, it appears that NGOs may participate as *amici curiae* before the African Commission.⁵⁹

The African Commission and the ACHPR can refer cases to each other, and NGOs that have been granted "observer" status by the African Commission may bring cases to the ACHPR under Article 5 of the Protocol.⁶⁰ The African Commission has in fact granted such status to al-

54. Protocol to the Afr. Charter on Hum. & Peoples' Rts. on the Establishment of an Afr. Ct. on Hum. & Peoples' Rts., art. 1, June 9, 1998, OAU Doc. OAU/LEG/EXP/AFCHPR/PROT (III) [hereinafter African Charter Protocol]; *History, AFR. CT. HUM. & PEOPLES' RTS.*, <http://www.african-court.org/en/court/history/> (last visited Jan. 24, 2011).

55. *The African Court on Human and Peoples' Rights*, AFR. INT'L COURTS & TRIBUNALS, http://www.aict-ctia.org/courts_conti/achpr/achpr_home.html (last visited Jan. 24, 2011).

56. African Charter, *supra* note 53, arts. 55(2), 56.

57. *Guidelines for Submission of Communications*, AFR. COMM'N HUM. & PEOPLES' RTS., http://www.achpr.org/english/_info/guidelines_communications_en.html (last visited Jan. 24, 2011) [hereinafter Afr. Comm'n *Guidelines*] ("Anybody, either on his or her own behalf or on behalf of someone else, can submit a communication to the commission denouncing a violation of human rights. Ordinary citizens, a group of individuals, NGOs, and states Parties to the Charter can all put in claims. The complainant or author of the communication need not be related to the victim of the abuse in any way, but the victim must be mentioned."); ANKUMAH, *supra* note 9, at 52–53; LINDBLOM, *supra* note 18, at 362; *see also* African Charter, *supra* note 53, arts. 55–56.

58. Afr. Comm'n *Guidelines*, *supra* note 57; Chidi Anselm Odinkalu & Camilla Christensen, *The African Commission on Human and Peoples' Rights: The Development of its Non-State Communication Procedures*, 20 HUM. RTS. Q. 235, 273 (1998) (the African Commission has "allowed individuals to be represented by NGOs" before it).

59. Odinkalu & Christensen, *supra* note 58, at 279; LINDBLOM, *supra* note 18, at 361–62.

60. African Charter Protocol, *supra* note 54, art. 5(3).

most 400 NGOs,⁶¹ and the application requirements for obtaining such status appear to be relatively minimal.⁶² The Protocol also requires, however, that the member state involved make a declaration accepting the competence of the ACHPR to receive cases brought by such NGOs; absent such a declaration, the ACHPR is not able to receive a petition from even an NGO with observer status.⁶³

Article 10 of the Protocol also grants any party to a case before the ACHPR the right "to be represented by a legal representative of the party's choice," which presumably would include NGOs.⁶⁴ As with the Inter-American system, neither the Commission nor the ACHPR appear to have a system of legal aid to help alleged victims hire a representative. Finally, Rule 45 of the ACHPR's Interim Rules of Procedure permits the ACHPR to ask any person or institution for information relevant to a case, although it is not clear what the mechanism would be for an NGO to submit a request to receive such an invitation.⁶⁵ NGOs therefore appear to have the ability to participate in cases before the ACHPR as representatives of a party or by invitation.

II. NGO INVOLVEMENT IN PRACTICE

It is clear that NGOs have a variety of ways in which they could participate in the human rights systems in Europe, the Americas, and Africa. To what extent they take advantage of these avenues for participation is less clear from the reports and statistics published by the courts and, in the Americas and Africa, the commissions. It is therefore necessary to examine the actual decisions issued by these bodies to determine the extent of NGO involvement.

61. See Afr. Comm'n Hum. & Peoples' Rts. [ACHPR], *Activity Rep. of the Afr. Comm'n on Hum. & Peoples' Rts., Submitted in Conformity with Article 54 of the Afr. Charter on Hum. & Peoples' Rts.* 7 (2008) (reporting that as of 2008, the African Commission had granted observer status to 380 NGOs).

62. See Afr. Comm'n Hum. & Peoples' Rts. [ACHPR], *Resolution on the Criteria for Granting and Enjoying Observer Status to Non-Governmental Organizations Working in the Field of Human Rights with the African Commission Human and Peoples' Rights*, ACHPR /Res.33(XXV)99 (May 5, 1999). *But see* MURRAY, *supra* note 9, at 90–92 (the African Commission has considered refusing to recognize NGOs that are not legally recognized in their home country).

63. African Charter Protocol, *supra* note 54, art. 34(6); *see also* Ibrahim Ali Badawi El-Sheikh, *Draft Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights*, 9 AFR. J. INT'L & COMP. L. 943, 946–47 (1997) (describing the history of this provision).

64. African Charter Protocol, *supra* note 54, art. 10(2).

65. Interim Rules of Court, AFR. CT. HUM. & PEOPLES' RTS. 45(2) (2008).

To evaluate what information could be feasibly gathered about NGO involvement and, to the extent possible, what initial observations or hypotheses could be formed based on that information, the decisions by each court and, where applicable, commission for the ten-year period from 2000 through 2009 were examined. As detailed in the appendix, the exact methodology used to identify and evaluate NGO involvement varied based on the publicly available information for the relevant body. For all of the bodies, however, it appears to be possible to identify the vast majority if not all of the NGO direct involvement in decisions on the merits during this time period. As previously discussed, for these purposes an NGO was defined as any organization that was formally constituted, organizationally separate from government, and non-profit-seeking.⁶⁶ While an organization's possession of these characteristics was generally evident by the description of the organization in the relevant decision, when necessary, an organization's NGO status was verified by checking other sources, such as the organization's self-description on its website.

The 2000 through 2009 time period was selected for several reasons. First, 2009 is the most recent year for which all decisions on the merits were readily available. Second, late 1998 was the effective date of Protocol 11 to the European Convention, which fundamentally changed the structure of the European human rights system.⁶⁷ Third and finally, ten years appears to be a sufficient passage of time so as to make any common patterns or trends unlikely to reflect merely the unique circumstances of a particular year or few years.

A. European Court of Human Rights

From January 1, 2000 through December 31, 2009, the ECHR rendered 10,067 decisions on the merits.⁶⁸ Of those decisions, 394 or approximately four percent had direct NGO involvement as follows:

66. See *supra* nn. 3–5 and accompanying text.

67. See *supra* note 27 and accompanying text.

68. See EUR. CT. H.R., SURVEY OF ACTIVITIES 2000 69 (2001); EUR. CT. H.R., SURVEY OF ACTIVITIES 2001 33 (2002); EUR. CT. H.R., SURVEY OF ACTIVITIES 2002 29 (2003); EUR. CT. H.R., SURVEY OF ACTIVITIES 2003 32 (2004); EUR. CT. H.R., SURVEY OF ACTIVITIES 2004 33 (2005); EUR. CT. H.R., SURVEY OF ACTIVITIES 2005 31 (2006); EUR. CT. H.R., SURVEY OF ACTIVITIES 2006 42 (2007); EUR. CT. H.R., SURVEY OF ACTIVITIES 2007 59 (2008); EUR. CT. H.R., ANNUAL REPORT 2008 133 (2009); EUR. CT. H.R., ANNUAL REPORT 2009 145 (2010) [hereinafter ECHR ANNUAL REPORT 2009], for the numbers of decisions on the merits for each year from the ECHR's Surveys of Activities for 2000 through 2007, as well as Annual Reports for 2008 and 2009.

Year	Decisions on Merits	NGO Involved⁶⁹	As Representative	As Applicant	As Intervener
2000	446	11	7	2	2
2001	726	9	2	3	4
2002	665	12	7	2	5
2003	548	8	5	0	3
2004	629	18	13	3	2
2005	1042	37	29	3	6
2006	1510	36	29	4	5
2007	1425	74	55	13	7
2008	1489	85	69	8	8
2009	1587	104	89	13	7
Total	10,067	394	305	51	49

NGO Concentrations (10% or more decisions)	Member State Concentrations (10% or more decisions)
Kurdish Human Rights Project 39 decisions involving NGOs (10%) Lawyers for Human Rights	Moldova 73 decisions (18%) Russia

⁶⁹ The "NGO Involved" figures for some years and in total are less than the sum of the three types of involvement columns because in a few decisions (eleven over the ten-year period) NGOs were involved in more than one capacity.

56 decisions involving NGOs (14%)	149 decisions (37%)
Stichting Russian Justice Initiative	
79 decisions (20%)	

The relatively low level of involvement by NGOs is consistent with the pre-Protocol 11 level of direct NGO involvement before the European Commission, identified by other scholars.⁷⁰ It is also consistent with the post-Protocol 11 level of NGO involvement from 1999 until 2003, as determined by Anna-Karin Lindblom.⁷¹

Even with the relatively low level of direct NGO involvement, certain patterns emerge. First, NGO direct involvement in ECHR decisions on the merits primarily came as representatives of the alleged victim(s), although in some cases an NGO was either the alleged victim (including several cases where an NGO or its members were complaining of delays in being able to register formally with the member state) or, slightly more rarely, an intervener.⁷² Second, there is a significant concentration within these decisions as to both the member state defendant and the specific NGO involved. With respect to the member state, almost forty percent of the judgments with direct NGO participation involved Russia as compared to approximately eight percent of all judgments on the merits during this time period.⁷³ In turn, this concentration appears to be driven

70. See *supra* note 25 and accompanying text.

71. See LINDBLOM, *supra* note 18, at 253–54 (identifying “at least” twenty-nine applications filed by NGOs that resulted in decisions on the merits, as compared to over 3,300 such decisions during this time period).

72. Lloyd Hitoshi Mayer, Collection of Data from the Decisions Rendered by the African Commission, European Court and Inter-American Commission and Court from 2000 to 2009 (May 22, 2011) (unpublished collection, Notre Dame University) [hereinafter Mayer Data].

73. *Id.* From 2000 through 2009, the ECHR issued 779 decisions on the merits involving Russia as compared to 9,714 decisions on the merits total. See, e.g., ECHR ANNUAL REPORT 2009, *supra* note 68, at 145 (216 decisions on the merits involving Russia as compared to 1,587 decisions on the merits total in 2009); *Survey of Activities 1999*, at 13–28, EUR. CT. H.R. (2000), available at <http://www.echr.coe.int/NR/rdonlyres/BA4CD581-4E3E-4324-83A6-1A753F92C1DE/0/SurveyofActivities1999.pdf> (listing decisions in 1999, including 132 decisions on the merits); *Ten Years of the “New” European Court of Human Rights 1998–2008 Situation and Outlook 77*, EUR. CT. H.R., (2009), available at <http://www.echr.coe.int/NR/rdonlyres/494676B6-727F-49FE-9158-17687F914D5D/0/ActesVersionEN.pdf> [hereinafter ECHR 1999–2008] (listing 563 decisions on the merits involving Russia as compared to 8,260 decisions on the merits total from 1999 through 2008. It is not clear why the total number of decisions on the merits

in large part by three specific NGOs. One of those NGOs is the Stichting Russian Justice Initiative (“SRJI”), which alone was involved in twenty percent of the decisions with direct NGO involvement.⁷⁴ The other two are the European Human Rights Advocacy Center (“EHRAC”) (directly involved in twenty-eight decisions) and the Human Rights Center “Memorial” (“Memorial”) (directly involved in thirty-two decisions).⁷⁵ These two NGOs appear to work closely together based both on EHRAC’s website and the fact that they were both involved as representatives in twenty-five decisions.⁷⁶ After accounting for decisions in which more than one of these NGOs was involved, these three NGOs collectively accounted for 113 of the 149 decisions with direct NGO participation against Russia, or over three-quarters of them.⁷⁷ These 149 decisions in turn represented approximately nineteen percent of the decisions on the merits involving Russia during these ten years.⁷⁸

The member state with the second highest level of decisions has a similar pattern. Almost twenty percent of the judgments on the merits with direct NGO participant had Moldova as a defendant, as compared to less than two percent of all judgments on the merits over this time period.⁷⁹ Again, this concentration appears to be driven in large part by certain specific NGOs—Lawyers for Human Rights (fifty-six decisions) and the Helsinki Committee for Human Rights (Moldova) (eleven decisions, including one with Lawyers for Human Rights).⁸⁰ Together these two NGOs accounted for sixty-six of the seventy-three decisions involving Moldova, or ninety percent.⁸¹ Finally, the seventy-three decisions with NGO participation involving Moldova were over forty percent of the decisions on the merits involving Moldova during this time period.⁸²

provided in these reports for 2000 through 2009 is slightly less than the total figure obtained by reviewing the annual reports and annual surveys for each year during this period. *See supra* note 69.

74. Mayer Data, *supra* note 72.

75. *Id.*

76. *See About Us*, EUR. HUM. RTS. ADVOC. CTR., <http://www.londonmet.ac.uk/research-units/hrsj/affiliated-centres/ehrac/home.cfm> (last visited Jan. 24, 2011) (“EHRAC has a long-established partnership with the Russian NGO, *Memorial*”).

77. Mayer Data, *supra* note 72.

78. *See id.*

79. From 2000 through 2009, the ECHR issued 148 decisions on the merits involving Moldova as compared to 9714 decisions on the merits total. *See id.*

80. Mayer Data, *supra* note 72.

81. *Id.*

82. *See Id.*

In Europe, therefore, five NGOs have been involved, primarily as representatives, in approximately forty-five percent of the decisions on the merits for which direct NGO involvement has been identified (once the involvement of multiple NGOs in the same decision has been taken into account).⁸³ This NGO concentration also appears to have translated into member state concentration, in that these same five NGOs focus exclusively on one of two countries (Russia and Moldova), leading to a disproportionate number of the NGO-involved cases being brought against those two member states. This NGO concentration, as well as the apparent agenda-shifting ability of these NGOs through drawing greater attention to activities of two specific member states, suggests that attention should be given to whether and to whom these NGOs are accountable.

It is natural to first look at SRJI, which was the most active NGO before the ECHR from 2000 through 2009 as measured by involvement in decisions on the merits.⁸⁴ In part, to demonstrate broad international support for its efforts, its various governing and advisory bodies appear to be drawn primarily from outside of both the North Caucasus region and Russia generally, although the staff appears to be primarily if not exclusively Russian.⁸⁵ Perhaps as significantly, its 2009 funding appears to have come primarily from similar, non-Russian sources, including not only the Open Society Institute and other private parties concerned with human rights, but also the government of Norway and various United Nations bodies.⁸⁶ EHRAC, Memorial through EHRAC, and the Kurdish Human Rights Project (the third NGO appearing in ten percent of the decisions with direct NGO involvement)⁸⁷ appear to have similar patterns of engagement with the international human rights community.⁸⁸ These

83. *Id.*

84. *Id.*

85. ANNUAL REPORT 2009, at 17, RUSSIAN JUST. INITIATIVE (2010), <http://www.srji.org/files/reports/2009.pdf> [hereinafter RUSSIAN JUSTICE INITIATIVE].

86. *Id.* at 19.

87. Mayer Data, *supra* note 72.

88. See EHRAC ANNUAL REPORT 2009, EUR. HUM. RTS. ADVOC. CTR. 36–37 (2010), <http://www.londonmet.ac.uk/fms/MRSite/Research/HRSJ/EHRAC/Publications/EHRAC%20AR09%20COMPLETE%20for%20email.pdf> (listing individual and organizational affiliations); *Donors*, EUR. HUM. RTS. ADVOC. CTR., <http://www.londonmet.ac.uk/research-units/hrsj/affiliated-centres/ehrac/donors/donors.cfm> (last visited Feb. 7, 2011); *About KHRP*, KURDISH HUM. RTS. PROJECT, <http://www.khrp.org/about-khrp.html> (last visited Feb. 7, 2011) (listing a wide range of private and government supporters). Information in English regarding Lawyers for Human Rights could not be located. See *Noutăți*, LAW. FOR HUM. RTS., <http://www.lhr.md/> (last visited Feb. 7, 2011) (organization's website, apparently in Moldovan except the name of the organization, is provided in English).

results suggest that these NGOs are both well-known and well-monitored within the international human rights community, even without any apparent formal mechanism to ensure such monitoring or accountability.

B. Inter-American Human Rights Commission and Inter-American Court of Human Rights

Turning now to the Inter-American system, given the gate-keeping function of the Inter-American Commission, both the decisions by that body and by the IACHR during the 2000 through 2009 period were considered. Since both bodies have relatively few decisions on the merits each year, all of such decisions for the entire time period were reviewed to identify possible NGO involvement. Only Commission decisions that did *not* lead to a Court decision were considered, as to the extent an NGO was involved in a case that led to a Court decision—including at the Commission stage of the proceedings—that is reflected in the figures for the Court. Such Commission decisions also do not appear to be publicly reported, except to the extent that they are discussed in the related Court decision. The results of this review are as follows:

Inter-American Commission

Year	Decisions on Merits	NGO Involved⁸⁹	As Representative	As Applicant	As Amicus
2000	26	18	18	0	1
2001	20	9	9	0	0
2002	11	6	6	0	0
2003	6	4	3	1	0
2004	4	3	3	0	0

⁸⁹ As was the case with the ECHR data, the “NGO Involved” figures for some years and in total are less than the sum of the three types of involvement columns because in a few decisions (two over the ten-year period) NGOs were involved in more than one capacity. Mayer Data, *supra* note 72.

2005	7	3	3	0	0
2006	8	4	4	0	0
2007	4	1	1	0	0
2008	7	5	4	0	1
2009	13	7	5	2	1
Total	106	60	56	3	3

NGO Concentrations (10% or more decisions)	Member State Concentrations (10% or more decisions)
<p>Corporación Colectivo de Abogados José Alvear Restrepo (José Alvear Restrepo Lawyers' Collective) (CCAJAR)</p> <p>7 decisions involving NGOs (12%)</p> <p>Centro por la Justicia y el Derecho Internacional (Center for Justice and International Law) (CEJIL)</p> <p>16 decisions (27%)</p>	<p>Brazil</p> <p>13 decisions (22%)</p> <p>Columbia</p> <p>8 decisions (13%)</p> <p>Peru</p> <p>9 decisions (15%)</p> <p>United States</p> <p>9 decisions (15%)</p>

Inter-American Court

Year	Decisions on Merits	NGO Involved⁹⁰	As Representative	As Applicant	As <i>Amicus</i>
2000	4	0	0	0	0
2001	7	5	3	0	3
2002	2	0	0	0	0
2003	5	5	5	0	0
2004	11	11	8	0	5
2005	16	16	15	0	9
2006	17	14	13	0	4
2007	10	7	7	1	2
2008	10	7	5	0	3
2009	14	10	10	0	0
Total	96	75	66	1	26

⁹⁰ As was the case with the ECHR data, the “NGO Involved” figures for some years and in total are less than the sum of the three types of involvement columns because in a few decisions (two over the ten-year period) NGOs were involved in more than one capacity. *Id.*

NGO Concentrations (10% or more decisions)	Member State Concentrations (10% or more decisions)
Asociación Pro Derechos Humanos (Association for Human Rights in Peru) (APRODEH) 8 decisions involving NGOs (11%) Centro por la Justicia y el Derecho Internacional (Center for Justice and International Law) (CEJIL) 36 decisions (48%)	Columbia 8 decisions (11%) Guatemala 9 decisions (12%) Peru 15 decisions (20%)

The pattern of NGO involvement in decisions on the merits by the IACHR and the Inter-American Commission is very different in two respects from that found for ECHR. First, while there were far fewer decisions on the merits—approximately two percent of the ECHR’s total taking into account both the Commission and IACHR—the proportion of NGO involvement was much higher.⁹¹ For the Commission, NGOs were involved directly in a majority of the decisions on the merits, while for the IACHR the percentage was almost eighty percent.⁹² Similar to the ECHR, however, when NGOs were involved directly, they were most often involved as representatives of the alleged victims (in ninety percent of the decisions on the merits with direct NGO involvement before both the Commission and the IACHR) as opposed to as alleged victims themselves or as third-parties, although the latter occurred in approximately a third of the decisions on the merits with direct NGO involvement at the IACHR.⁹³ This high proportion of cases involving NGOs is consistent with the findings of Lindblom for an earlier period that partially overlaps

91. *Id.*

92. *Id.*

93. *Id.*

with the period considered here with respect to the Commission, although it is higher with respect to the IACHR.⁹⁴

Second, while there was significant NGO concentration—more on that issue in a moment—there was less obvious member state concentration. Given the high proportion of NGO involvement, comparisons with the overall proportion of member state involvement are not particularly meaningful, yet for both the Inter-American Commission and the IACHR only one member state appeared in twenty percent or more of the decisions in which NGOs were involved, and these member states were different for the Commission (Brazil) and the IACHR (Peru).⁹⁵ Also, less strong was the role of a single NGO in driving these concentrations. For decisions by the Commission involving Brazil, the Centro por la Justicia y el Derecho Internacional (Center for Justice and International Law) (“CEJIL”) was involved in only eight of the twelve decisions, while for decisions by the IACHR involving Peru, the most commonly involved NGO—Asociación Pro Derechos Humanos (Association for Human Rights in Peru) (“APRODEH”)—was involved in only seven of the fifteen.⁹⁶ Unlike the European experience, however, there was one NGO—CEJIL—that was involved in numerous decisions involving different member states, including over a quarter of the Commission decisions with direct NGO involvement and almost half of the IACHR decisions with direct NGO involvement.⁹⁷ More specifically, CEJIL represented alleged victims against eight different member states before the Commission and against thirteen member states before the IACHR.⁹⁸ This limited concentration with respect to NGO involvement is consistent with the findings of Lindblom for an earlier period that overlapped in part with

94. See LINDBLOM, *supra* note 18, at 275 (for 1998 through 2003, approximately half of the Inter-American Commission case reports on the merits and friendly settlements were in cases instituted by NGOs, whether acting alone or ‘with other bodies or individuals’); *id.* at 277–78 (approximately a third of IACHR judgments on the merits involved cases that originated with petitions filed by NGOs with the Inter-American Commission); see also Mónica Pinto, *NGOs and the Inter-American Court of Human Rights, in CIVIL SOCIETY*, *supra* note 9, at 47, 50 (stating, without any more details, that “[t]he great majority of complaints registered with the Inter-American Commission . . . are lodged by NGOs acting as petitioners”).

95. Mayer Data, *supra* note 72.

96. With respect to the Commission, an NGO that, at least at one time, was affiliated with CEJIL was involved with two of the cases relating to Brazil. See *Diniz Bento da Silva v. Brazil*, Case 11.517, Inter-Am. Comm’n H.R., Report No. 23/02, OEA/Serv.L./V/II.02, doc. 5 ¶ 1 (2002) (indicating that the Comissão Pastoral da Terra [Pastoral Land Commission] was affiliated with CEJIL, at least when the original application was filed in 1995).

97. Mayer Data, *supra* note 72.

98. *Id.*

the period considered here, although she did not provide details regarding the extent of such concentration.⁹⁹

Similar to SRJI, CEJIL appears to be well-integrated into the international human rights community. Its Board of Directors includes individuals associated with a range of other human rights organizations and NGOs, including American University, Columbia University, Human Rights Watch, and the Myrna Mack Foundation, as well as indigenous human rights organizations in a number of the member states.¹⁰⁰ Its financial supporters include a broad range of organizations and governments, including many from outside of member states, such as the Ford Foundation, Save the Children Sweden, and the Federal Ministry of Foreign Relations of Germany.¹⁰¹ At the same time its staff appears to be drawn exclusively from the member states.¹⁰²

C. African Commission on Human and Peoples' Rights and African Court on Human and Peoples' Rights

The ACHPR only began operations recently and appears to have only issued a single judgment to date, which was not on the merits but instead concluded that the ACHPR lacked jurisdiction to hear the case at issue.¹⁰³ The existence of only a single ACHPR jurisdictional decision in 2009 (or ever, it appears) makes it impossible to determine if any patterns exist with respect to NGO involvement in cases before the ACHPR. The role of the ACHPR is also limited by the fact that as of 2008, only two states had allegedly made declarations consenting to the court's jurisdiction.¹⁰⁴

99. See LINDBLUM, *supra* note 18, at 276–77 (noting that as of 2003, commonly involved NGOs were “CEJIL, the Colombian Commission of Jurists . . . APRODEH[], Americas Watch (now Human Rights Watch), and Comisión Ecuémica de Derechos Humanos (CEDHU)”).

100. *The Board of Directors*, CEJIL, <http://cejil.org/en/cejil/board-directors> (last visited Jan. 21, 2011).

101. ACTIVITIES REPORT 2008/9, at 5, CEJIL (2010), http://cejil.org/sites/default/files/CEJILs_Report_2008_2009.pdf.

102. *Staff*, CEJIL, <http://cejil.org/en/cejil/staff> (last visited Feb. 7, 2011).

103. *Latest Judgments*, AFR. CT. HUM. & PEOPLES' RTS., <http://www.african-court.org/en/cases/latest-judgments/> (last visited Feb. 7, 2011) [hereinafter *Latest Judgments*]; *Michelot Yogogombaye v. The Republic of Senegal*, Afr. Ct. Hum. & Peoples' Rts. No. 001/2008 ¶ 37 (Dec. 15, 2009) [hereinafter *Senegal Judgment*].

104. *Senegal Judgment*, *supra* note 103, ¶¶ 17, 35 (discussing how Michelot Yogogombaye alleged that the Republics and States of Senegal and Chad had made such declarations). Furthermore, only twenty-five of the fifty-three African Union member states have ratified the Protocol creating the ACHPR. *General Information*, AFR. CT. HUM. & PEOPLES' RTS., <http://www.african-court.org/en/court/mandate/general-information/> (last visited Feb. 7, 2011).

As for the African Commission, there were only thirty decisions on the merits from 2000 through 2009 that had direct NGO involvement, but that low number reflects the low number of total decisions on the merits during that same period of forty-four.¹⁰⁵ Because of the low number of decisions, the following table does not provide a year-by-year breakdown but instead collects the data for the entire ten-year period:

Year	Decisions on Merits	NGO Involved¹⁰⁶	As Representative	As Applicant	As Amicus
2000 to 2009	44	30	30	3	1

NGO Concentrations (10% or more decisions)	Member State Concentrations (10% or more decisions)
Institute for Human Rights and Development in Africa (IHRDA) 6 decisions involving NGOs (20%)	Nigeria 4 decisions (13%)
International Centre for the Legal Protection of Human Rights (Interights) 5 decisions (17%)	Zimbabwe 4 decisions (13%)

As the table shows, the level of NGO involvement is proportionately very high, representing over two-thirds of the decisions on the merits. Also, similar to the European and Inter-American systems, NGOs primarily served as representatives of alleged victims, as opposed to rarer

¹⁰⁵ Mayer Data, *supra* note 72.

¹⁰⁶ As was the case with the ECHR data, the "NGO Involved" figures for some years and in total are less than the sum of the three types of involvement columns because in a few decisions (two over the ten-year period) NGOs were involved in more than one capacity. *Id.*

appearances as the alleged victim or as a third party.¹⁰⁷ Given the small number of decisions, concentrations with respect to NGOs or member states are less meaningful than in the other two systems, although at least two NGOs—the Institute for Human Rights and Development in Africa (“IHRDA”) and the International Centre for the Legal Protection of Human Rights (“Interights”)—were each involved in more than ten percent of the decisions (with two decisions involving both of them).¹⁰⁸ Consistent with these findings, a previous review of African Commission Activity Reports by Lindblom found that a majority of applications that led to decisions on the merits from 1997 to 2003 had been filed by one or more NGOs.¹⁰⁹ Lindblom also found some NGO concentration during that time period, although of the three NGOs named by Lindblom as being frequent parties before the Commission,¹¹⁰ only Interights appears to have remained as heavily involved in the period considered here.

Neither of the two most frequently involved NGOs appears to have focused on any particular member state, as IHRDA represented alleged victims in cases brought against five different member states and Interights in cases brought against four different member states.¹¹¹ No obvious member state concentrations existed generally either, with only Nigeria and Zimbabwe appearing in slightly more than ten percent of the decisions involving NGOs.¹¹² The twenty-two remaining decisions involving NGOs are spread among twenty other member states.¹¹³

Finally and similar to SRJI, CEJIL, and other NGOs most frequently directly involved in decisions on the merits in the European and Inter-American human rights systems, both IHRDA and Interights appear to be tied into the larger international human rights community. IHRDA’s funding base includes both non-African NGO sources such as the Ford Foundation and the Swedish NGO Foundation for Human Rights and non-member state government sources, such as the Department for International Development UK.¹¹⁴ Similarly, the Board of Directors and Advisory Council for the London-based Interights is drawn primarily from companies and NGOs from outside the African Commission’s member

107. *Id.*

108. *Id.*

109. LINDBLOM, *supra* note 18, at 283 (discussing how twenty-eight out of forty-eight “communications had been filed by one or several NGOs”).

110. *Id.* at 284 (noting that the Nigerian organizations Constitutional Rights Project and Civil Liberties Organisation had filed multiple communications with the Commission, as had the British organization Interights).

111. Mayer Data, *supra* note 72.

112. *Id.*

113. *Id.*

114. *Funders*, IHRDA, <http://www.ihrda.org/funders/> (last visited Feb. 7, 2011).

states.¹¹⁵ The only deviation from this pattern is that IHRDA's Board of Directors consists entirely of individuals from the member states, although one of them (a co-founder of IHRDA) currently works for the Open Society Justice Initiative, based in New York.¹¹⁶ Again, these apparently extensive international linkages appear to have developed without any formal requirements by the African Commission or ACHPR.

III. RAMIFICATIONS OF NGO INVOLVEMENT

NGOs have many avenues for involvement in the three regional human rights enforcement systems considered, including coming forward as alleged victims themselves, serving as representatives of alleged victims, and seeking the ability to intervene in a pending case as a third party. Yet in all three systems the primary avenue for NGO involvement over the ten year period ending in 2009 was as representatives of alleged victims. This result is perhaps not surprising, since all three systems appear to rely heavily on private parties bringing alleged human rights violations to the attention of the commissions and courts even though under the African and Inter-American human rights enforcement systems, the commissions have pro-active authority to investigate such violations.¹¹⁷

What is perhaps surprising is the difference in the extent of NGO-provided representation in the European system as compared to the Inter-American and African systems. In the European system, NGOs appear to have served as representatives in a relatively small proportion of cases that resulted in decisions on the merits—approximately four percent during the years reviewed—while in the other two systems NGOs served as representatives in a majority of such cases.¹¹⁸ While there may be some undercounting of NGO involvement, particularly with respect to the European system for reasons detailed in the appendix, it seems highly unlikely that any undercounting would significantly change such a dramatic difference.

The reasons for this difference are not self-evident, although several hypotheses present themselves. One hypothesis is that the availability of legal aid in the European system but not, apparently, in the Inter-American or African systems makes representing alleged victims more financially attractive to private lawyers in Europe, although the apparent-

115. See *Board of Directors*, INTERIGHTS, <http://www.interights.org/about-us-board/index.htm> (last visited Feb. 7, 2011); *International Advisory Council*, INTERIGHTS, <http://www.interights.org/about-us-advisory/index.htm> (last visited Feb. 7, 2011).

116. *Board*, IHRDA, <http://www.ihrda.org/board/> (last visited March 19, 2011).

117. See African Charter, *supra* note 53, arts. 45–46; see also American Convention, *supra* note 40, art. 41.

118. Mayer Data, *supra* note 72.

ly relatively low level of such aid would argue against this reason.¹¹⁹ Another, also financially based hypothesis, is that the ECHR's common practice of awarding legal costs to alleged victims whose claims are successful may also make cases more attractive to private lawyers, although the fact that the vast majority of applications fail (primarily on admissibility grounds) makes reliance on such awards a risky proposition at best.¹²⁰ Finally, a perhaps more likely hypothesis is that, for the most part, the private bar in European member states is sufficiently large, financially stable, and not vulnerable to retaliation such that there are sufficient private lawyers willing to pursue human rights cases even if there is little chance of compensation for doing so.¹²¹ Which, if any, of these hypotheses explains the apparent disparity in the number of NGOs representing alleged victims in the Inter-American and African systems as opposed to the European system is beyond the scope of this article, but could be a direction for future research into the operation of these systems and the defense of human rights more generally. However, even without knowing the exact reasons for this difference, it is possible to draw some ramifications for the development of human rights NGOs from this difference, as is detailed below.

A second important difference between the various systems is with respect to member state concentrations. In Europe, while NGOs are involved in a relatively small proportion of cases, those cases are disproportionately focused on two member states (Russian and Moldova) that are involved in almost two-thirds of the decisions with direct NGO involvement.¹²² That concentration is substantially higher than the proportion of all decisions on the merits involving those two countries.¹²³ While

119. See *supra* note 39 and accompanying text.

120. See, e.g., ECHR 1999–2008, *supra* note 73, at 77, 79 (reporting 181,965 “[a]pplications declared inadmissible or struck off” by the ECHR from 1999 through 2008, as compared to 8,260 decisions on the merits during the same time period); *Taking a Case to the European Court of Human Rights*, *supra* note 39 (noting that while private lawyers may be willing to take a case under a conditional fee agreement, they may be reluctant to do so because of the risk of not winning the case and therefore not being paid).

121. While it may also be that domestic systems for resolving alleged human rights violations are relatively effective in most European member states, the statistics for all decisions on the merits from 1999 through 2008 indicate that alleged victims from all of the member states seek relief at the ECHR; it is just that alleged victims from most of the member states do not appear to be represented by NGOs in the vast majority of cases. See, e.g., ECHR 1999–2008, *supra* note 73, at 80 (showing judgments involving every member state, except Montenegro and Monaco).

122. Mayer Data, *supra* note 72.

123. *Id.*

some member state concentrations appear in the other two systems, they are significantly more muted. This concentration in Europe appears to have been the result of five NGOs that focus all of their activities on these two member states,¹²⁴ demonstrating that a relatively small handful of NGOs can have a significant effect on the ECHR's docket of cases.

This observation leads to an important similarity between at least the European and Inter-American systems: the disproportionate role of one or a handful of NGOs. In Europe this disproportionate role is found with respect to the five NGOs that have brought cases against two specific member states.¹²⁵ In the Americas, this disproportionate role is found with respect to a single NGO (CEJIL) that does not have a particular member state focus.¹²⁶ In both systems, however, a single NGO or small group of NGOs significantly impacted the docket of the relevant bodies and therefore, presumably, the shaping of human rights law by those bodies (and, therefore, probably, the behavior of the targeted member states).

These observations suggest that the development and support of a few, or even a single, human rights NGO can have a profound effect on the development of human rights law in a region of the world. In Europe, this effect is seen through a handful of NGOs focused on member states that appear, for whatever reasons, to lack a private bar that is willing and able to bring claims of alleged human rights violations to the ECHR—a lack that does not apparently exist in most European member states. In the Americas, this NGO role is seen in the form of a single NGO that works throughout the region. In Africa, it appears that neither level of NGO concentration exists as of yet, although there are at least two NGOs that appear to be candidates for stepping into such a role on a regional-wide basis.¹²⁷

These observations also have ramifications for the issue of NGO accountability that is the focus of this Symposium. Given the disproportionate role of a relatively few NGOs in this regional human rights enforcement system, it is natural to ask whether these NGOs have account-

124. *Id.*

125. *Id.*

126. *Id.*

127. *Id.* Of course, the existence of committed and well-resourced NGOs is only one ingredient for a successful regional human rights enforcement system. See, e.g., George Mukundi Wachira, *African Court On Human and Peoples' Rights: Ten Years On and Still No Justice*, 2008 MINORITY RTS. GRP. INT'L 10–12 (noting other concerns about the effectiveness of the African Commission); Danwood Mzikenge Chirwa, *African Regional Human Rights System: The Promise of Recent Jurisprudence on Social Rights*, in SOCIAL RIGHTS JURISPRUDENCE, *supra* note 48, at 335–36.

ability to outside individuals and groups to ensure that they use this influence appropriately. This is especially true since there do not appear to be any significant formal or legal limitations on the structure, leadership, funding, or other characteristics of NGOs that represent alleged victims or otherwise appear before the regional human rights bodies. Even a cursory review of the most heavily involved NGOs reveals, however, that well known and reputable individuals and groups from both within and outside of the relevant member states appear to provide significant oversight to these NGOs both through serving on the governing and advisory boards of these NGOs and through providing funding.¹²⁸ While a more in-depth review of these NGOs could be done, an initial review of these groups does not reveal a lack of accountability.

This apparent accountability, even without any formal or legal requirements, combined with the relatively wide open access to the regional human rights bodies, not only for NGOs but for all types of organizations, strongly suggests that there is no need in this context for any formal or legal limits or requirements on NGOs seeking to participate in proceedings between these bodies. This conclusion is in contrast to the limitations, discussed by some of my fellow presenters, on what groups qualify as “NGOs” for purposes of gaining a place at the table at other international bodies, such as the United Nations, the World Health Organization, and the World Trade Organization.¹²⁹ This contrast makes sense, however, once one realizes that for the latter entities, organizations identified as “NGOs” have special access to deliberations and decision-making processes that is not enjoyed by other private parties. For the regional human rights bodies discussed here, there is no such special access. Instead, the filter for involvement—particularly in decisions on the merits—is the merits (and admissibility) of the underlying case or the usefulness to the tribunal of the information presented (for *amicus curiae* or interveners) and not the intrinsic characteristics of the presenter or their representative (beyond perhaps a connection to a member state). It therefore appears unnecessary to attempt to limit the definition of “NGO” for purposes of appearing before the regional human rights bodies in any significant way (except perhaps for requiring a connection to a member state). This conclusion suggests that the decision to limit access to the African court to only NGOs granted observer status before the African commission imposed an unnecessary barrier to NGO involvement with that court.¹³⁰

128. See *supra* nn. 86–89, 101–03, and 115–16 and accompanying text.

129. See *supra* note 16 and accompanying text.

130. See *supra* note 60 and accompanying text.

CONCLUSION

This study is limited to decisions on the merits and therefore does not explore the role of NGOs in bringing alleged violations to these bodies that are either unsuccessful because of a lack of admissibility or other defect, or are resolved through settlement or other means short of a decision on the merits. This study also does not explore other means by which NGOs may influence regional human rights enforcement systems. Nevertheless, the observations described above indicate that it is worthwhile to consider not only the level of direct NGO involvement in a particular regional human rights enforcement system, but also to consider the patterns of that involvement and to compare those patterns between systems. Doing so may provide indications of which NGOs, and in what locations, are doing the most to not only protect individual victims but also to shape the agendas of the commissions and courts that make up these systems. Such indications may in turn suggest where attention should be directed to ensure the strength of such critical human rights NGOs. In particular, this study reveals the critical role of NGOs in representing alleged victims, particularly in countries or regions where it appears the private legal bar is not, for whatever reasons, providing such representation. By identifying and supporting such NGOs, the work of the regional human rights enforcement systems may then be significantly enhanced.

APPENDIX

METHODOLOGY

1. In General

Year: The year of each decision was determined based on the date of that decision reported in the decision itself. For dating issues that arose with respect to the African Commission, see the section below relating to that commission.

Decisions on Merits: Whether a decision was on the merits was determined based on the classification provided by the relevant body (commission or court), if available, or on a review of the decision itself. Decisions on the merits were defined for these purposes as decisions that reached an ultimate conclusion regarding whether the member state involved had, or had not, violated the asserted portions of the relevant human rights document. Decisions on the merits therefore did not include the following types of decisions:

- Admissibility Decisions: Decisions regarding whether the applicants had met the threshold requirements for consideration of their claims, such as exhaustion of domestic remedies, unless an admissibility decision was part of a decision that also determined whether there had been a violation.
- Decisions Closing Cases for Other Reasons: These decisions included decisions memorializing settlements by the parties, decisions acknowledging withdrawn applications, and decisions closing cases because of a failure on the part of the applicant to pursue their case.
- Decisions Reconsidering Earlier Decisions on Merits: Such decisions included, for example, IACHR decisions interpreting earlier decisions on the merits in the same case.

NGO Involved: Whether a decision involved an NGO was determined by reviewing each decision identified as possibly having NGO direct involvement (using the methods described below for each relevant body) for entities that were NGOs. Whether a named entity was an NGO was determined based on the description of the entity in the decision, in other decisions of the same body, or, absent such information, the description of the entity provided by the entity itself on its website. For purposes of this article, entities identified as political parties were not considered NGOs because of their mixed private/public character. The instances of political parties directly involved in decisions on the merits were also

relatively rare, with the parties generally among the alleged victims in those decisions.

Since this methodology required that the NGO involved be identified in the decision, it is possible that NGO involvement was undercounted to the extent the individual representatives involved in a given case in fact worked for an NGO but the NGO itself was not identified in the opinion. For example, in at least four Inter-American Commission decisions involving death row inmates, the United Kingdom attorney who represented the inmates was identified in the decisions as associated with a private law firm, even though he was also associated with an NGO (the Death Penalty Project) housed at that firm at the time.¹³¹ Because, however, the NGO was not identified in the decisions, those decisions were not counted as having direct NGO involvement. Similarly, an IACHR decision identified two individuals as representatives of the alleged victims who work for the Center for Civil and Human Rights at Notre Dame Law School, but that association was not mentioned in the decision.¹³² Again, because the NGO was not identified in the decision, that decision was not counted as having direct NGO involvement. Finally, in a number of decisions before the ECHR, the Inter-American Commission, and the IACHR, representatives were identified as professors but there is nothing to indicate that the institutions where they teach are themselves involved

131. In each decision the representative of the alleged victim is identified only as Saul Lehrfreund of the London, United Kingdom law firm of Simons Muirhead & Burton. Paul Lallion v. Grenada, Case 11.765, Inter-Am. Comm'n H.R., Report No. 55/02, OEA/Ser.L./V/II.02, doc. 5 rev. 1 ¶ 1 (2002); Benedict Jacob v. Grenada, Case 12.158, Inter-Am. Comm'n H.R., Report No. 56/02, OEA/Ser.L./V/II.02, doc. 5 rev. 1 ¶ 1 (2002); Denton Aitken v. Jamaica, Case 12.275, Inter-Am. Comm'n H.R., Report No. 58/02, OEA/Ser.L./V/II.02, doc. 5 rev. 1 ¶ 1 (2002); Dave Sewell v. Jamaica, Case 12.347, Inter-Am. Comm'n H.R., Report No. 76/02, OEA/Ser.L./V/II.02, doc. 5 rev. 1 ¶ 1 (2002). Saul Lehrfreund is, however, also the co-founder and joint Executive Director of The Death Penalty Project, an NGO that was housed at the Simons Muirhead & Burton firm until 2005. *Executive Directors and Staff*, THE DEATH PENALTY PROJECT, http://www.deathpenaltyproject.org/content_pages/2 (last visited Jan. 24, 2011); *Directors and Trustees*, THE DEATH PENALTY PROJECT, http://www.deathpenaltyproject.org/content_pages/8 (last visited Mar. 1, 2011).

132. Miguel Castro-Castro Prison v. Peru, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 160 (Nov. 25, 2006); H. Sofia Galván Puente, *Legislative Measures as Guarantees of Non-Repetition: A Reality in the Inter-American Court, and a Possible Solution for the European Court*, REVISTA IIDH 69, 89 (2009) (discussing how in "*Castro v. Peru* . . . the Center for Civil and Human Rights of the University of Notre Dame represented the victims").

in the case.¹³³ Such decisions are therefore also not counted as having direct NGO involvement.

For purposes of this Article, direct NGO involvement did not include merely a mention of an NGO in the facts at issue, such as, for example, as a participant in the domestic proceedings involving the claims asserted or as a source of evidence such as a report provided by one of the parties.¹³⁴ Similarly, direct NGO involvement did not include mention of an NGO as a group to which the alleged victim belonged or sought to belong if the NGO itself was not a party to the proceedings before the relevant body. Finally, references to bar associations were not counted as direct NGO involvement when the references were made only for purposes of identifying the bar association to which the individual representatives of alleged victims belonged or as a source of information regarding whether legal fee reimbursement requests were reasonable, and lacked any indication that the bar association itself was party to the proceedings before the relevant body.

Role of NGO (Representative, Applicant, or Amicus Curiae/Intervener): The role of the NGO was determined by reviewing each decision identified as having direct NGO involvement. The NGO was classified as a representative if it was explicitly identified as such for the alleged victims, or if the NGO was identified as the applicant but the alleged victims were individuals or entities other than the NGO itself. The NGO was classified as an applicant if the NGO itself was identified in the decision as the alleged victim or one of the alleged victims. Finally, the NGO was classified as an *amicus curiae* or intervener only if explicitly identified as such in the decision.

2. Specific Bodies

a. European Court of Human Rights¹³⁵

Given the volume of decisions on the merits from 2000 to 2009, decisions in which NGOs were involved were identified initially by conducting a search for common words and terms associated with NGOs using

133. See, e.g., Cesar Fierro v. United States, Case 11.331, Inter-Am. Comm'n H.R., Report No. 99/03, OEA/Ser.L/V/II.118, doc. 5 rev. 2 ¶ 1 (2003) (identifying one of the representatives of the alleged victim as a Professor of Law at Ohio State University).

134. See LINDBLOM, *supra* note 18, at 328 (noting the use by non-NGOs of NGO materials as evidence).

135. ECHR, http://www.echr.coe.int/echr/homepage_EN (last visited Jan. 24, 2011).

the Lexis database of these decisions.¹³⁶ The Lexis database was chosen, as opposed to the ECHR's own HUDOC database,¹³⁷ because of the versatility and speed of the former database. To confirm the accuracy of the Lexis database, parallel searches in the HUDOC database for 2009 were also conducted, which found all of the same cases as identified through the Lexis database using the same search terms. All of the decisions found through this search were then reviewed to determine both whether the decision was on the merits and whether an NGO was directly involved, using the criteria described in the "In General" section above. For example, a decision might include the word "association" because the alleged victims asserted a violation of freedom of association, not because an "association" was a party to the proceedings.

The search results also revealed a number of decisions where an entity clearly identified as an NGO either in other cases or through other sources was not so identified in that particular decision, leading to the question of whether the search results were under-inclusive because of such omissions. Searches using the names of the NGOs identified as such in other decisions (except for NGOs with such common names that they would yield numerous false results, *e.g.*, Justice, Liberty) revealed an additional ninety-three decisions with direct NGO involvement. Even with these additional searches, however, it is possible that some NGOs that either were not identified through the original search terms or had too common names to be searched for using those names in fact directly participated in ECHR decisions but, because they were not identified in any way as NGOs in the decision text, their participation is not reflected in the reported results.

136. See *Source Information*, LEXISNEXIS, http://w3.lexis.com/research2/source/srcinfo.do?_m=3a4605c03ad091a4af6b2e43b7e49efb&src=360688&wchp=dGLzVlz-zSkAB&_md5=0c2131b4355b53915286bd9781cdf827 (last visited Jan. 24, 2011). The database contains decisions from November 1960 through current, as received directly from the ECHR. *Id.* The search terms used were: "association"; "charitable organization"; "charity"; "NGO"; "N.G.O."; "non-for-profit"; "non-governmental organization"; "non-profit"; "nonprofit"; "not-for-profit"; "NPO"; "religious group"; and "religious organization". *Id.* Reflecting the British spelling, the terms including the word "organization" were also searched for using "organisation" instead. Mayer Data, *supra* note 72.

137. HUDOC Database, ECHR, <http://www.echr.coe.int/ECHR/EN/Header/Case-Law/HUDOC/HUDOC+database/> (last visited Jan. 24, 2011).

b. Inter-American Commission on Human Rights¹³⁸

The decisions on the merits by the Inter-American Commission were identified by relying on the Commission's own classification of its decisions, which it divides into "Admissible," "Inadmissible," "Friendly Settlement," and, more recently "Archival Decisions" categories as well as "Merits."¹³⁹ The full text of all of the Commission's decisions is available on the Commission's website, divided both by these classifications and by the year in which the Commission issued the decision.¹⁴⁰ For the 2000 through 2009 time period, all of the "Merits" decisions on the Commission's website were reviewed for direct NGO involvement based on the methodology described in the "In General" section above.

c. Inter-American Court of Human Rights¹⁴¹

The full text of all of IACHR's decisions are available on the IACHR's website in chronological order.¹⁴² For the 2000 through 2009 time period, all of the IACHR's decisions were reviewed to determine if they were decisions on the merits and, if they were, for direct NGO involvement, using the methodology described in the "In General" section above for both determinations.

d. African Commission on Human and Peoples' Rights¹⁴³

The full texts of the African Commission's decisions are available on the Commission's website in chronological order based on the date of the filing of the relevant application (called a "communication"). For decisions involving multiple applications, the decision is listed based on the earliest application filed. This ordering made it difficult to easily identify decisions issued from 2000 through 2009. To overcome this difficulty, all decisions involving applications filed in 1993 or later—including decisions involving multiple applications when one or more of the applica-

138. INTER-AM. COMM'N H.R., <http://www.cidh.oas.org/DefaultE.htm> (last visited Jan. 24, 2011).

139. *E.g., Cases Published During the Year 2009*, INTER-AM. COMM'N H.R., <http://www.cidh.oas.org/casos/09.eng.htm> (last visited Jan. 24, 2011).

140. *Cases Published by the IACHR by Year*, INTER-AM. COMM'N H.R., <http://www.cidh.oas.org/casos.eng.htm> (last visited Jan. 24, 2011).

141. CORTE INTERAMERICANA DE DERECHOS HUMANOS [INTER-AM. CT. H.R.], <http://www.corteidh.or.cr/index.cfm?CFID=842550&CFTOKEN=49913401> (last visited Jan. 24, 2011).

142. *Jurisprudencia casos contenciosos*, CORTE INTERAMERICANA DE DERECHOS HUMANOS, <http://www.corteidh.or.cr/casos.cfm> (last visited Jan. 24, 2011).

143. AFR. COMM'N HUM. & PEOPLES' RTS., http://www.achpr.org/english/_info/news_en.html (last visited Jan. 24, 2011).

tions had been filed in 1993 or later—were reviewed to determine if the decision had been issued in the relevant time period. While several decisions based on applications filed in 1993 and 1994 lacked a date for the decision (including lacking any mention of the session of the Commission at which the decision had been rendered, which would have indirectly identified the year in which the Commission had issued the decision), only one of those decisions was a decision on the merits.¹⁴⁴ Given the fact that this decision was on a 1993 application, the decision itself was relatively short (less than three pages), and there was nothing in the decision to indicate that consideration of the application had been unduly delayed (in fact, if anything the indications were to the contrary in that the Commission had declared the application admissible at the Commission's 16th session, held in 1994), it was decided that the Commission almost certainly rendered this decision before 2000 and so it was not included in the data reported in the main text.¹⁴⁵

All decisions found to have been issued by Commission from 2000 through 2009 were then reviewed to determine if they were decisions on the merits and, if they were, for direct NGO involvement, using the methodology described in the “In General” section above for both determinations.

e. African Court on Human and Peoples' Rights¹⁴⁶

The ACHPR's website lists only a single judgment (with two opinions), issued by the ACHPR in late 2009.¹⁴⁷ That judgment is not a decision on the merits, as the term is defined for purposes of this article, because the ACHPR determined that it had no jurisdiction to hear the case.¹⁴⁸ The ACHPR does not appear to have issued any other decisions from 2000 through 2009.¹⁴⁹

144. See *Civil Liberties Organization v. Nigeria*, Afr. Comm'n on Hum. & Peoples' Rts., Report No. 101/93 (2000), available at http://www.achpr.org/english/Decison_Communication/Nigeria/Comm.101-93.pdf.

145. See *id.*; see also *Sessions*, AFR. COMM'N ON HUM. & PEOPLES' RTS., http://www.achpr.org/english/_info/past_en.html (last visited Jan. 24, 2011) (listing the dates and locations for past Commission sessions).

146. AFR. CT. HUM. & PEOPLES' RTS., <http://www.african-court.org/en/> (last visited Jan. 24, 2011).

147. *Latest Judgments*, *supra* note 103.

148. *Senegal Judgment*, *supra* note 103, ¶ 37.

149. *Latest Judgments*, *supra* note 103.