

CIVIL SOCIETY INTERACTIONS WITHIN THE INTER-AMERICAN INSTITUTIONAL FRAMEWORK: TWO CASE STUDIES IN PROMOTING THE STRENGTHENING OF THE REGIONAL HUMAN RIGHTS SYSTEM

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Article abstract

This paper is an attempt to partly address the question of the impact, on the inter-American human rights system, of non-state actors interacting within the institutional structure of the Organizations of American States (OAS). It reflects the perspective of Rights & Democracy, a Canadian institution with an international mandate to promote democracy by supporting the full realization of all human rights. Rights & Democracy has supported civil society human rights organizations in their battle for a stronger regional human rights system, and a more participatory OAS. The paper first reviews the formal inter-American structure for civil society participation, then submits what is meant to be an empirical contribution. It describes two concrete civil society participation experiences aiming to strengthen the enforcement of inter-American human rights norms: the ongoing process carried out by the *International Coalition of Organizations for Human Rights in the Americas*, and the actions undertaken by *indigenous peoples* within the framework of the negotiations surrounding the *Draft American Declaration on the Rights of Indigenous Peoples*. The paper ends with some concluding remarks on a mitigated assessment of civil society participatory mechanisms within the OAS.

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GENEVIÈVE LESSARD **

This paper is an attempt to partly address the question of the impact, on the inter-American human rights system, of non-state actors interacting within the institutional structure of the Organizations of American States (OAS). It reflects the perspective of Rights & Democracy, a Canadian institution with an international mandate to promote democracy by supporting the full realization of all human rights. Rights & Democracy has supported civil society human rights organizations in their battle for a stronger regional human rights system, and a more participatory OAS. The paper first reviews the formal inter-American structure for civil society participation, then submits what is meant to be an empirical contribution. It describes two concrete civil society participation experiences aiming to strengthen the enforcement of inter-American human rights norms: the ongoing process carried out by the *International Coalition of Organizations for Human Rights in the Americas*, and the actions undertaken by *indigenous peoples* within the framework of the negotiations surrounding the *Draft American Declaration on the Rights of Indigenous Peoples*. The paper ends with some concluding remarks on a mitigated assessment of civil society participatory mechanisms within the OAS.

Cet article s'inscrit dans le cadre d'une exploration des impacts, sur le système interaméricain de protection des droits humains, des interactions entre les acteurs non étatiques et la structure institutionnelle de l'Organisation des États américains (OÉA). Il se veut le reflet de l'approche adoptée par Droits et Démocratie, une organisation canadienne dont le mandat est de promouvoir la démocratie dans le monde via le renforcement de la pleine réalisation des droits humains, dans le cadre de son appui aux efforts des organisations de la société civile des Amériques pour assurer l'efficacité du système régional de protection des droits, d'une part, et des mécanismes de participation de l'OÉA, d'autre part. Dans un premier temps, les structures formelles de l'OÉA relatives à la participation de la société civile y sont examinées. Puis, sont présentées des observations d'ordre empirique portant sur deux initiatives concrètes de participation spécifiquement destinées à favoriser la pleine application des normes interaméricaines de droits humains : le processus conduit par la *Coalition internationale des organisations pour les droits humains dans les Amériques*, et les efforts entrepris par les peuples autochtones dans le cadre des négociations entourant le *Projet de Déclaration américaine sur les droits des peuples autochtones*. L'article se conclut sur quelques remarques finales concernant les forces et limites des mécanismes actuels de l'OÉA en matière de participation de la société civile.

* Although a preliminary version of this article was first drafted in November 2008, for the purpose of the Colloquium The Inter-American Human Rights System November 14-15 2008, footnotes contain updated (July 2010) information.

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This publication raises important questions dealing with the nature of the interactions of non-state actors within the inter-American institutional structure. What role, if any, do these non-state actors play in human rights protection in the Americas? Do non-state actors benefit or impede human rights protection? How do these actors (multinational corporations, trade unions, armed groups, civil society and others) interact with one another? Has their presence (or absence) in the inter-American institutional framework created new phenomena and challenges? This article does not pretend to systematically explore these questions for the whole range of non-state actors; it concentrates on the concrete experiences of one set of these actors: civil society representatives whose actions within the Organization of American States (OAS) are specifically aimed towards enhancing human rights at the regional level.

This contribution reflects the standpoint of Rights & Democracy. The International Centre for Human Rights and Democratic Development (Rights & Democracy) is a non-partisan organization that was created by the Canadian Parliament in 1988, with a mandate to promote democratization through the full realization of all internationally recognized human rights.¹ It works in Asia, Africa and Latin America. As part of its mission, Rights & Democracy has identified the “strengthening of the inter-American system of human rights” as an objective whose attainment has “democratizing potential” all over the Americas. With this in mind, the inter-American system was made a strategic priority in Rights & Democracy’s programming.

For years, Rights & Democracy worked towards this objective, by accompanying and supporting civil society initiatives aimed at preserving or reinforcing this unique human rights protection system. In this context, and since the mid-1990s, Rights & Democracy has attended most of the Inter-American Commission’s periods of sessions, all of the General Assembly (GA) of the OAS’s annual meetings, most of its Special Conferences² and some related international events,³ as well as a substantial number of negotiation sessions within different OAS bodies, namely inter-American decision-making bodies responsible for the negotiation of the *Draft American Declaration on the Rights of Indigenous Peoples*.⁴ It also supported, directly and indirectly,⁵ joint civil society initiatives, including the funding of the Caucus of Indigenous Peoples of the Americas and the provision, over four consecutive years, of a Canadian intern based in Washington to help facilitate the technical coordination of human rights organizations’ action before the OAS.

This paper will take stock of two of the most significant cases that

¹ For a full description of the mission and mandate of Rights & Democracy, online: Rights & Democracy <www.dd-rd.ca/site/home/index.php?lang=en>.

² The Special Conference on Security held in Mexico on October 27 and 28, 2003 is one notable example.

³ We are referring to some of the Summits of the Americas, such as the Special Summit of the Americas held in Monterrey, Nuevo León, in 2004.

⁴ OAS, Inter-American Commission on Human Rights, *Draft of the Inter-American Declaration on the Rights of Indigenous Peoples*, OR OEA/Ser.L/V/II.90/Doc.14, rev.1 (1995) [*Draft Declaration*].

⁵ “Indirect support” would include discussions, with Canadian Government representatives, on issues related to the strengthening of the human rights system.

Rights & Democracy has followed and supported with respect to human rights-oriented participation processes. The first experience is the ongoing work carried out by what is called the *International Coalition of Organizations for Human Rights in the Americas*, a network of human rights defenders who represent victims of human rights violations before inter-American human rights bodies. The second case that will be examined is the concerted action undertaken by *representatives of indigenous peoples of the continent* in the context of the negotiations on the *Draft American Declaration on the Rights of Indigenous Peoples*. Prior to exploring these two notable experiences, the paper will briefly review the formal inter-American structure for civil society participation in the OAS. It will conclude with some remarks assessing the real impacts of these initiatives for the protection of human rights within the inter-American system.

I. The Formal Structure for Civil Society Participation in OAS Activities

The mechanisms for civil society participation in the OAS were only formalized in 1999, with the adoption of a resolution (759) that established the “guidelines for civil society participation in OAS activities”.⁶ These guidelines were reinforced in 2003 with resolutions 840 (which defined “strategies for increasing and strengthening participation by civil society organizations and (CSOs) in OAS activities”⁷) and 1915 (which entitled “increasing and strengthening civil society participation in OAS activities”⁸). They were then complemented in 2004 by resolution 864, which established the “specific fund to support the participation of civil society organization in OAS activities”.⁹

⁶ OAS, Permanent Council, *Guidelines for Civil Society Participation in OAS Activities*, OR OEA/Ser.G/CP/Res.759 (1217/99) (1999) [*Guidelines for Civil Society*]. The *Guidelines for Civil Society* establish a set of guiding principles, standard procedures, criteria for registry (including recognized expertise, representative character, sufficient institutional structure, accountability and independence) and responsibilities of participating CSOs.

⁷ OAS, Permanent Council, Committee on Inter-American Summits Management and Civil Society Participation in OAS Activities, *Strategies for Increasing and Strengthening Participation by Civil Society Organizations (CSOs) in OAS Activities*, OR OEA/Ser.G/CP/Res.840 (1361/03) (2003) [*Strategies CSOs 2003*]. *Strategies CSOs 2003* is the “legitimizing base” for a series of actions aimed at enhancing civil society participation at the OAS. See OAS, *Manual for Civil Society Participation in the OAS and the Summit of the Americas*, Washington, D.C., OAS 2009, online: Organization of American States <http://www.oas.org/en/ser/dia/civil_society/index.shtml> [*Manual for Civil Society Participation*].

⁸ OAS, General Assembly, 33rd Sess., *Increasing and Strengthening in Civil Society Participation in OAS Activities*, OR OEA/Ser.P/XXXIII-O.2/AG/Res.1915 (2003) [*Civil Society Participation 2003*]. Most importantly, *Civil Society Participation 2003* acknowledges the centrality of access to information in making participation processes effective and institutionalizes what had previously been a looser, “best practice”: opportunities for direct dialogue between civil society and high level State representatives.

⁹ OAS, Permanent Council, *Specific Fund to Support the Participation of Civil Society Organizations in OAS Activities*, OR OEA/Ser.G/CP/Res.864 (1413/04) (2004) [*Specific Fund CSOs*]. As its name indicates, *Specific Fund CSOs* gave civil society groups the opportunity to receive funding for activities related to their participation at the OAS.

The adoption of the *Inter-American Democratic Charter (IDC)*¹⁰ in 2001 was also of particular importance in the history of civil society participation in collective decision-making and norm-setting in the Americas,¹¹ as it represented a formal recognition of the value granted by the organization to civil society input, both regional and nationally. Article 6 of the *IDC* underscores the “right and responsibility of all citizens to participate in decisions relating to their own development”, and affirms that “promoting and fostering diverse forms of participation strengthens democracy”.¹² Moreover, article 26 states that the “OAS will consult and cooperate on an ongoing basis with Member States and will take into account the contributions of civil society organizations in (specific) fields.”¹³ More recently (June 2008), a new resolution (2395) was adopted by the GA defining “strategies to strengthen civil society participation in OAS activities”.¹⁴

Responsibility for the technical coordination of participatory procedures belongs to the Committee on Inter-American Summits Management and Civil Society Participation in *OAS* Activities (CISC).¹⁵ Organizations with participatory status with the OAS are entitled to attend the General Assembly’s public meetings,¹⁶ as well as those of the two organizations directly related to the GA: the Permanent Council (PC) and the Inter-American Council for Integral Development (CIDI). Organizations can also be present at meetings organized by subsidiary bodies, including the Permanent Committees.¹⁷ Organizations with participatory status are granted early access to

¹⁰ OAS, General Assembly, *Inter-American Democratic Charter*, 28th Spec. Sess., OR OEA/Ser.P/AG/RES.1 (XXVIII-E/01) (2001) [*IDC*] (entered into force 11 September 2001).

¹¹ The OAS itself calls the *IDC* the marking of “a new dynamic of consensus”. See *Manual for Civil Society Participation*, *supra* note 7 s. 4.

¹² See *IDC*, *supra* note 10 s. 6.

¹³ *Ibid.* s. 26.

¹⁴ This “strategy” was distributed to member states in May 2009. See OAS, General Assembly, 38th Sess., Increasing and Strengthening the Participation of Civil Society and Social Actors of Civil Society in the Activities of the Organization of the American States and in the Summits of the Americas Process, OR OEA/Ser.P/AG/Res.2395 (XXXVII-O.2) (2008) [*Civil Society Participation 2008*]. The most recent version of the resolution is resolution 2612. See OAS, General Assembly, 40th Sess., *Increasing and Strengthening the Participation of Civil Society and Social Actors of Civil Society in the Activities of the Organization of the American States and in the Summits of the Americas Process*, OR OEA/Ser.P/AG/Res.2612 (XL-O/10) (2010) [*Civil Society Participation 2010*]. *Civil Society Participation 2010* was adopted at the last GA following a failed attempt by the Venezuelan and other governments to modify (or restrict, according to certain opinions) the original language on civil society participation. For a summary of the debates, see Vonda Brown, “Protecting Civil Society in Latin America”, 23 June 2010, online: Open Society Blog <<http://blog.soros.org/2010/06/protecting-civil-society-in-latin-america>>.

¹⁵ OAS, Permanent Council, *Review of the Rules of Procedure for Civil Society Participation with the Organization of American States*, OR OEA/Ser.G/CP/CISC-106/04 rev.1 (2004), online: OAS Documents Regarding Civil Society <<http://www.civil-society.oas.org/English/CISC/2004/cp12522e04.doc>>.

¹⁶ Closed meetings can sometimes be attended provided prior authorization by the chair or the host country.

¹⁷ The five Permanent Committees are the General Committee, the Committee on Political and Juridical Affairs (CAJP, in Spanish), the Committee on Administrative and Budgetary Affairs (CAAP, in Spanish), the Committee on Hemispheric Security (CHS) and the above-mentioned body responsible for coordinating participation, the Committee on Inter-American Summits Management and Civil Society Participation (CISC).

information,¹⁸ and may attend meetings directly (under certain conditions), give presentations (with prior authorization), provide information (following specific procedures) and, at times, give expert advice. They *cannot*, however, *participate directly* in deliberations, negotiations or decision making with the Member States.¹⁹ This restriction happens to be particularly sensitive, as we will see, when one looks at the negotiation procedures for the new norms to be adopted as indigenous peoples rights.

Nowadays, several hundreds of CSOs are registered before the OAS.²⁰ Particularly important for these organizations are the procedures designed to ensure civil society contributions to the work of the different commissions and working groups of the Permanent Council. Organizations can attend these fora as observers and circulate written communications prior to meetings. Registered organizations can give presentations at the beginning and end of sessions. These procedures have been of great value due to the sensitive and highly important nature of the topics discussed during these meetings. There are committees of the PC, for example, that have been of critical importance to the processes that will be explored in this paper: the Committee on Juridical and Political Affairs and the Working Group to Prepare the *Draft American Declaration on the Rights of Indigenous Peoples* (Working Group).

In reality, however, only a few organizations are capable of participating actively in all the OAS deliberations. Organizations based in Washington, D.C., thanks to their proximity to the OAS headquarters, are in the best position to take advantage of these participatory structures. Organizations from other countries on the continent generally only take part in the participatory activities related to the annual meetings of the GA.²¹ The GA's importance stems from the fact that, as the "supreme organ", it is the OAS's primary "policy generator". When authorized by the host country,²² groups can attend the OAS's annual General Assembly as "special guests". The most prominent of the GA-related participatory events²³ are

- *The Dialogue between the Heads of Delegations, the OAS Secretary General and Civil Society Representatives*. This dialogue is scheduled during regular sessions of the GA, just prior the inaugural session.²⁴ It is designed to allow CSOs to interact directly with high-level country representatives on matters directly related to the official theme of the GA.²⁵ The specific procedures of

¹⁸ Most importantly, to the draft documents being negotiated.

¹⁹ *Manual for Civil Society Participation*, *supra* note 7 at 23-26.

²⁰ As of today (August 2010), and according to Secretary General José Miguel Insulza, the total number is 326. See also (numbers differ) registry of civil society organizations within the OAS, online: OAS <http://www.oas.org/en/ser/dia/civil_society/registry.shtml>.

²¹ Human rights organizations, for their part, also travel to Washington, D.C. for the periods of sessions of the Inter-American Commission, where they participate in some important meetings.

²² The GA of the OAS meets once a year, in a different Member State each year. This makes the GA accessible to a wider range of organizations from all of the Americas.

²³ High-level special conferences of the OAS (e.g. Special Conference on Hemispheric Security in the Americas) follow approximately the same participatory pattern. This also applies to some Ministerial-level meetings.

²⁴ As indicated in *Civil Society Participation 2003*, *supra* note 8.

²⁵ Generally, the Ministers of External Relations are responsible for leading their national delegations. In their absence (which is generally the case at the "Dialogue with Civil Society", as will be seen) the

each session are defined in great part by the host country, with the technical support of the CISC.

Interestingly, not only CSOs have the opportunity to engage in dialogue with the Heads of Delegations, but so do other important actors, such as academics and representatives from the business sector. The details of these discussions depend on the specific annual procedures. It is worth noting that civil society is considered *one of the various "actors"* whose input is sought; a consideration which will be relevant in the concluding assessment.

- The “*Informal Dialogue between the Secretary General of the OAS and CSOs*”. This event is held prior to the General Assembly. It is designed to allow civil society to engage in an informal, face-to-face conversation with the primary representative of the organization on subjects of general interest to the OAS. The Secretary General will take questions at random and give an unscripted response to the concerns expressed to him. These concerns vary greatly, given the wide range of CSOs present.

Also organized by the OAS are preparatory coordination meetings (sometimes called “*fora*”), in which all registered CSOs—whether or not they intend to directly attend the GA—can engage in discussions and reach consensus over the matters they will be voicing together at the official participatory events. These coordination meetings can take place several months, or even a few hours, before formal participatory activities, generally in Washington, D.C. or in the GA’s host country of that year.

Without a doubt, the interest of civil society participants in attending the OAS’s General Assembly far exceeds the participatory formalities that encourage them to do so. Above all, the GA is an opportunity for organizations to request informal bilateral meetings (“*reuniones de pasillo*”) with representatives of Member States or of the different decision-making bodies of the Organization and have in-depth discussions on common issues of concern.²⁶ The space will also be used for them to convene side-events on questions they consider important and to conduct public outreach and press initiatives.

The formal institutional framework, despite the serious shortcomings that will be presented further on, has strengthened over time, due precisely to the claims of CSOs for a more open inter-governmental institution. This framework is undeniably being used by several organizations, perhaps most actively by those interested in the preservation and strengthening of inter-American human rights norms.²⁷ The extent to which they are successfully attaining their objective is a whole different question.

country Ambassador to the OAS acts as the leader.

²⁶ These lobby sessions aim to collect information from inside negotiations (knowing where each country stands) and “pushing for” a particular view on specific issues being discussed. Meetings with the Secretary General and other high-level representatives (the Presidents and Executive Secretaries of the Inter-American Commission and Inter-American Court, for example) are also held.

²⁷ Although this affirmation was true for a certain number of years, it appears as being more and more debatable, as human rights organizations seem to be decreasing their presence in these formal spaces. This point will be explored further in the text.

II. The International Coalition of Organizations for Human Rights in the Americas

Before this OAS institutional framework was established, interactions between civil society organizations and representatives of OAS decision-making bodies did occur, but in a more spontaneous fashion. In fact, civil society organizations themselves, especially human rights organizations, often took the initiative to set discussions in motion. Indeed, they are part of the reason that norms have evolved.

The International Coalition of Organizations for Human Rights in the Americas (the Coalition) is made up of organizations from various countries in the Americas.²⁸ These organizations are, for the most part, national human rights organizations who represent the victims of violations before their national judicial institutions, and then before the Inter-American Human Rights Commission and Court.²⁹ The exact number of members is difficult to assess, as some participate in joint activities only sporadically. In any case, the Coalition gathers organizations of all sizes (from the most visible national organizations to the most locally-oriented ones). A few international (like Amnesty International) and regional organizations (like the Latin American and Caribbean Committee for the Defense of Women's Rights, CLADEM³⁰) are also among the Coalition's participants.

Notably, the Coalition has benefitted from the outstanding contribution of one of these regional organizations: the Center for Justice and International Law (CEJIL). CEJIL is the sole organization whose mission is entirely oriented towards the strategic use of inter-American human rights norms. It litigates, usually in conjunction with its national partner organizations, more than half the cases that appear before inter-American bodies.³¹ It has offices in Rio de Janeiro, Buenos Aires and, most importantly, San José (where the Court is) and Washington, D.C. (where the Commission and most OAS offices are). This geographic advantage, combined with the organization's invaluable expertise, has allowed CEJIL to provide the Coalition with knowledge and insight, in addition to leadership, facilities (press

²⁸ Or, more precisely, from a "majority" of countries of the continent, as organizations from the Caribbean are remarkably absent from these initiatives.

²⁹ On very key, sensitive issues, statements of the Coalition have gathered over one hundred signatures. See "Statement on Hemispheric Security", 23 October 2003, online: *América Latina en Movimiento* <<http://alainet.org/active/4865&lang=es;>>; The Statement released at the GA of Quito in 2004, "Pronunciamiento presentado en ocasión del Trigésimo Cuarto periodo ordinario de sesiones de la Asamblea General de la Organización de Estados Americanos", online: *International Coalition of Organizations for Human Rights in the Americas* <<http://www.ichrdd.ca/espanol/commdoc/publications/pronunOEAAsamblea2004.html>>, gives an accurate idea of the core organizations in the network.

³⁰ El Comité de América Latina y el Caribe para la Defensa de los Derechos de la Mujer (CLADEM) is all the more important within the Coalition, for it specializes in women's human rights and thus makes an indispensable contribution.

³¹ In the case of the Court, past annual reports of the Executive Secretary have shown that these numbers can reach 75 %.

services, facilities, etc.), representation, and many other things.³²

As members of the Coalition, these groups undertake coordinated, coherent actions before the *political bodies* of the OAS. Their objective is to ensure that the political decisions that are made at the OAS do not negatively affect—and ideally strengthen—the effectiveness of inter-American human rights bodies. In other words, members of the Coalition litigate before inter-American human rights institutions, and then *complement* this work with political action before *political* bodies in order to protect the effectiveness of their legal work.

The experience of the Coalition is interesting for several reasons. First, it is the largest civil society network that focuses specifically on the protection of inter-American human rights norms. Second, its participation at the OAS long predates the implementation of formal mechanisms for participation; it can probably even be argued that the Coalition played an important role in the institutionalization of these participatory mechanisms. Third, beyond the existence of these formal mechanisms, the Coalition has been able to maintain and ensure an important level of dialogue with the inter-American institutions (not as a formal mechanism, but rather as “good practice”), and has been the one to initiate these opportunities for dialogue. Fourth, when the Coalition mobilizes on a specific issue, it acts in a coordinated manner, working to include the diverse points of view of the organizations in the different countries, combining their knowledge and then organizing concerted and shared advocacy strategies to achieve its goals.

Let us see how this applies.

A. Human Rights Network as Precedent-Setters for Civil Society Participation

The trajectory of CSO participation started with the human rights system’s practice of communicating directly with civil society organizations within the different Member States: CSOs would provide information during *in loco* visits by the Inter-American Commission of Human Rights.³³ When, in 1965, the Commission was given the mandate to hear individual cases, CSOs were able to provide it with first-hand documentation on human rights violations. Their participation intensified at the beginning of the 1990s. In 1992, their presence at the General Assembly of the OAS led to the inclusion of a paragraph that stated it was necessary to consult civil society in the resolution defining the procedures for the adoption of the *Inter-American Convention on Forced Disappearance of Persons*: a decisive first step.³⁴ And in this case, civil society participation contributed significantly to strengthening the content

³² See The Center for Justice and International Law, online: CEJIL <<http://cejil.org/en>>.

³³ The information contained in this historical recollection of the Coalition’s experience is drawn from the work of Michel Maza, “The Inter-American System: Civil Society Participation and Contributions” (Address delivered at the Global Governance Conference: Civil Society and the Democratization of Global Governance, Montreal, 13-16 October 2002) [unpublished].

³⁴ *Inter-American Convention on Forced Disappearance of Persons*, 9 June 1994, O.A.S.T.S. A-60, 33 I.L.M. 1530 (entered into force 28 March 1996).

of the Convention that was adopted in 1994.

In the mid-1990s, CSOs officially formed the International Coalition in response to attempts by some Member States to reform the inter-American human rights system in a way that would weaken it. The Coalition worked intensively to counter these attempts, by suggesting measures that would strengthen the system. Meanwhile, it also pushed for greater access to the OAS for civil society in general. At the 1997 General Assembly of the OAS in Lima, 180 organizations signed onto the final NGO declaration (*pronunciamiento*) and succeeded in blocking negative reforms. In 1999, as previously mentioned, formal status was granted to CSO participants sanctioning their presence at sessions held by various OAS bodies. This allowed human rights organizations to become more actively present within these spaces.

At the 2000 General Assembly in Windsor, a first joint meeting of CSO representatives and Foreign Ministers of OAS Member States was held in parallel to the General Assembly. This event was particularly interesting because it was civil society that convened the political representatives and engaged them in the dialogue. This formula was maintained in the subsequent General Assemblies held in Costa Rica (2001) and Georgetown (2002). This “dialogue” was then made part of the official agenda at the General Assembly of the OAS in Santiago de Chile in 2003. Today, the joint meetings are recognized as one of the most important instruments for civil society participation.

The Coalition makes extensive use of these participatory mechanisms. It regularly attends the GA and the two dialogues, where it sits alongside all of the other organizations and interest groups that are now present at OAS activities. It follows and intervenes in the sessions of the Permanent Council’s commissions and working groups.³⁵

B. Beyond Formality

It is interesting to note that the Coalition does not limit its action to formal procedures; some of its participatory initiatives can be considered “practices” that have been standardized outside—or at least partly outside—of the institutional apparatus.

This is illustrated by the way in which human rights organizations interact directly with inter-American human rights institutions: the Executive Secretary of the Commission, for example, regularly hosts a meeting with these organizations before or during each of the Commission’s periods of sessions. The organizations who take part in these meetings can voice concerns and obtain information on key issues. In the same way, human rights organizations take the lead in initiating discussions with key

³⁵ As mentioned above, CEJIL has been most active in the work conducted before the entities of the PC. Formerly, the intern supervised by Rights & Democracy (posted at CEJIL office) also played an important role.

figures within the system. For example, prior to hearings, human rights organizations can convene meetings with Commissioners. They can also organize meetings with representatives from the office of the Secretary General responsible for civil society participation, or with Foreign Ministers prior to General Assemblies.

Finally, human rights organizations engage in coordinated lobbying initiatives targeting the different country representatives of the Permanent Missions to the OAS. This requires permanent communication, information-sharing and coordinated agendas.

C. Coordinated Action

With regard to the content of this participation, the Coalition has focused its action, for the past few years, on six thematic political priorities, all of which aim to achieve one main goal: to strengthen the human rights protection system they have been using to represent victims of human rights violations:

- 1) *Universalization* of human rights norms: that is, promoting the ratification of all human rights instruments by all OAS Member States;
- 2) *Full implementation* by Member States of the recommendations and decisions made by the Inter-American Commission and Court;³⁶
- 3) *Independence* of inter-American human rights institutions: this includes issues such as the sufficient funding of human rights bodies and the prevention of structural reforms that would affect the autonomy of the different entities, including the Commission's Executive Secretariat;
- 4) *Transversality*: this issue relates to efforts made by the Coalition's members to ensure that all of the OAS's decisions pay sufficient attention to human rights norms, even when the theme being discussed does not seem to be directly related to human rights.³⁷ For instance, some of the Coalition's member organizations have taken interest in ensuring that the hemispheric integration process (and thus the Summit of the Americas process) would not eventually undermine the capacity of States to fully implement their human rights obligations. Another related initiative—which was perhaps undertaken in a more efficient manner—was the follow-up submitted to the 2003 Special Conference on Hemispheric Security, for which organizations examined the provisions being negotiated in order to ensure that they would not run

³⁶ This area has attracted growing attention over the past years. Rights & Democracy, for instance, completely shifted its programmatic focus from "universalization" to "full implementation".

³⁷ Many among the developers of these priorities also used the (stronger) term of "primacy" ("*primacía*") to express the concept that internationally recognized human rights should always take precedence over any other type of international initiative. As determined at the World Conference on Human Rights, held in Vienna in June 1993, human rights are the primary obligation of States. See "Vienna Declaration and Programme of Action" in *Report of the World Conference on Human Rights*, 14-25 June 1993, at 20 (A/CONF.157/24).

counter to inter-American human rights norms.³⁸

- 5) *Participation*: strengthening participation mechanisms and making them more effective is also a priority in itself for the Coalition, which performs constant assessments of the relevance of participatory procedures and insists on transparency and consultation at every possible occasion.
- 6) *Specific country priority*: occasionally, when the context requires it, members of the Coalition will come together around a specific country issue. This has been the case, for instance, with Colombia. Colombian members of the Coalition, for whom the inter-American human rights system is of high importance, have been particularly successful at getting the entire Coalition to support their political position at the OAS.³⁹

One particularly illustrative example of the manner in which the Coalition works can be found in the concerted action the Coalition carried out during the 2001 negotiations for an *Inter-American Democratic Charter*.⁴⁰ The idea of an IDC was very important to human rights organizations. It would be binding for all Member States and would spell out what democracy entailed, what it forbade (i.e. what constituted an “alteration” of democracy) and what means the OAS was willing to deploy in order to preserve it. It should be recalled that these negotiations took place in a very specific context, influenced primarily by two elements: the recent fall of the Fujimori regime, and the ongoing negotiations of what was expected to become a Free Trade Agreement in the Americas (FTAA). Discussions about the possibility of the OAS adopting a Charter to promote and protect democracy were thus shaped by the need to use the Peruvian experience as an opportunity to tackle a wider range of threats to democracy,⁴¹ and the need to avoid false “legitimization” of an economic integration process that otherwise raised serious democratic concerns.

For the member organizations of the Coalition, discussions of a potential IDC presented an opportunity to promote three ideas of particular interest. The first was the idea that “by definition”, any assessment of democracy should be conducted in a participatory fashion, i.e., should seek out civil society’s input. This lesson was

³⁸ See OAS, General Assembly, 32nd Sess., *Declaration of Bridgetown on Multidimensional to Hemispheric Security*, OR OEA/Ser.P/AG/Dec.27 (XXXII-O/02) (2002). Of particular importance was human rights organizations’ capacity to secure an article on human rights (article 15) in the *Inter-American Convention Against Terrorism*. *Inter-American Convention Against Terrorism*, 3 June 2002, O.A.S.T.S. A-66, 42 I.L.M. 19 (entered into force 10 July 2003).

³⁹ For example, this was the case when the Coalition pushed to have the MAPP-OEA—the OAS mission sent to support the “peace” (i.e. demobilization) process in Colombia—explicitly tied to inter-American human rights norms. More recent examples of similar work within countries can be found in actions taken regarding Venezuela and, of course, the Honduran Coup.

⁴⁰ See IDC, *supra* note 10. The author has developed a more exhaustive recollection of the referred experience elsewhere. See Genevieve Lessard, “From Quebec to Lima: Human Rights, Civil Society and the *Inter-American Democratic Charter*. A Perspective from Rights & Democracy” (2003) 10:3 *Can For Pol’y J.*

⁴¹ Sofia Macher, “The *Inter-American Democratic Charter*: Challenges and Opportunities for the Promotion and Defence of Democracy in the Americas” (Address delivered at the Conference on *Inter-American Democratic Charter*: Challenges and Opportunities, LIU Centre for the Study of Global Issues, University of British Columbia, Vancouver, 12-13 November 2002) [unpublished].

drawn directly from the Peruvian experience.⁴² The second idea, one of utmost importance, was that any expansion of the normative inter-American definition of what constitutes an “interruption of democracy”⁴³ should include human rights violations. For CSOs, human rights are the basis of democracy. A merely “institutional” approach to democracy was therefore unacceptable. Thirdly, and as a logical consequence of the previous point, any formal follow-up or implementation mechanism for the common defence of democracy in the region was expected to involve, in an organic manner, inter-American bodies responsible for the surveillance of human rights on the continent: that is, of course, the inter-American Commission and Court.

In this specific case, the process for civil society participation was quite interesting. At the General Assembly in Costa Rica, Member States of the OAS had been unable to reach a consensus on the wording of the *IDC*, and had given themselves a three-month extension on the negotiation period. In the meantime, civil society was to be consulted both nationally and regionally, in what has since been referred to as one of the most advanced participation processes ever seen.⁴⁴ On that occasion, members of the Coalition defined a common position and designed a strategy for its promotion. They mobilised in a series of complementary participatory initiatives in their respective countries (where they gathered information on the political positioning of each government, lobbied, etc.), and acted together at the formal regional level. One hundred and twenty-five organizations would later sign the Coalition’s final *pronunciamiento*.⁴⁵

The *IDC* that was adopted in Peru at the end of this mobilization (September 2001) is considered to have limited operational value: the mechanisms for its concrete implementation, in addition to being unclear and, to date, inoperative, are completely exempt from civil society and human rights institutions’ surveillance. Nevertheless, in terms of norm definition, it did represent an important step in the right direction, as the *IDC* clearly states that human rights are a fundamental component of democracy.⁴⁶ Organizations in the Coalition, especially Peruvian ones, have taken great pride in the establishment of these new, important norms.

⁴² In the Peruvian case, civil society organizations had been able to identify threats to the democratic order long before other actors (most importantly, the international community) could even perceive them.

⁴³ The idea that the *IDC* would represent an “expansion” of the inter-American definition of democracy refers to the evolving normative framework on democracy that pre-dated the *IDC* which only addressed “sudden” interruptions of democracy, a situation that was then thought to be no longer threatening democracies of the Americas. See OAS, General Assembly, 21st Sess., *Representative Democracy*, OR AG/RES. 1080 (XXI-O/91) (1991).

⁴⁴ Resolution 1838, adopted at the 2001 OAS GA in Costa Rica, instructed the Member States to launch an additional three-month negotiation period and determined the basic conditions for negotiations. See OAS, General Assembly, 31st Sess., *Resolution of San José Costa Rica – Inter-American Democratic Charter*, OR OEA/Ser.P/XXXI-O.2/AG/Res.1838 (2001). Interestingly, the obligation to consult civil society was spelled as one of those conditions. It should be noted that Canada played a key role in the drafting of this clause. See OAS, Permanent Council, *Convocation of the Twenty-eighth Special Session of the General Assembly*, OR OEA/Ser.G/CP/Res.793 (1283/01) (2001), online: OAS Documents regarding Civil Society <http://www.oas.org/charter/docs/convocation_en.htm>.

⁴⁵ “Declaración Final”, Foro de Organizaciones No Gubernamentales, San José, Costa Rica, 2 June 2001, online: Abogarte <<http://www.abogarte.com.ar/declaracionXXI.html>>.

Admittedly, the visibility and—in general terms—the activity of the Coalition has decreased in the past few years,⁴⁷ as the network went through a series of internal and outside obstacles. However, it is still the sole network to systematically look at OAS discussions (negotiations of new human rights norms, negotiations of instruments that apparently do not relate to human rights instruments, reform processes,⁴⁸ etc.) with a view to not letting the inter-American system, which they do make use of, in the name of the victims, being weakened.

III. Indigenous Peoples within the Negotiation Process on the *Draft American Declaration on the Rights of Indigenous Peoples*⁴⁹

The participation of the region's indigenous peoples in the negotiations on the *Draft Declaration* can rightly be considered one of the most interesting experiences with respect to non-state actors' interactions within the inter-American institutional structures. Rights & Democracy's support to indigenous peoples' mobilization around the Declaration dates back to 1998. At the time, negotiations were based on a conceptual premise that indigenous peoples were not satisfied with: they were referred to as "indigenous populations", a term that opened the door to indigenous peoples not being fully considered, under international law, as full "international rights-bearers".⁵⁰

As indigenous peoples mobilized to recover their full "peoples" status, Rights & Democracy began to support their inter-American networking and organizing processes. At the time, a *Draft Declaration* had been elaborated by the Inter-American Commission on Human Rights.⁵¹ According to the *Draft Declaration*, consultations with indigenous peoples would only take place at the national level in some countries (as was the case of Canada), with a diversity of procedures. However—and despite demands from the indigenous peoples—no formal structure had been put in place for indigenous peoples' effective participation in the unfolding discussions and negotiations.⁵²

⁴⁶ Article 3 of the *IDC* states that "[e]ssential elements of representative democracy include, *inter alia*, respect for human rights and fundamental freedoms". See *supra* note 10 s. 3.

⁴⁷ The Coalition's presence in General Assemblies, for example, is not close to what it once was.

⁴⁸ It is notable, and of great concern, that the Coalition failed to be as successful in giving concerted and effective oversight to the reform process that inter-American bodies recently (2010) completed.

⁴⁹ I am grateful to Marie Léger, whose insights have served as the basis for this section.

⁵⁰ In this perspective, it is important to distinguish Indigenous Peoples' participation initiatives from those of human rights organizations. Indigenous peoples consider they have their own authorities; this implies that they depart from the relationship of representation "civil societies" have with their elected governments. In this sense, Indigenous Peoples are more "entitled" to direct participation, as "full subjects", in decision-making. It is a significantly different approach.

⁵¹ As instructed by Resolution 1022 of the GA in 1989. See OAS, General Assembly, 19th Sess., *Informes de la Comisión interamericana de derechos humanos*, OR OEA/AG/Res.1022(XIX-O/89) (1989). The Commission developed its proposal until 1997, when the draft was handed to the Permanent Council.

⁵² At the time, only "experts" could give their opinion on norms being negotiated. Some experts did consult with indigenous peoples, some others did not. From 1997 to 1999, the PC discussed the *Draft Declaration* behind closed doors.

Nevertheless, in the years to come, indigenous peoples would eventually gain enough recognition for their representatives to sit directly at the negotiations table.

How did this happen? Four factors seem to have converged and contributed to these advancements: 1) the high level of organizational cohesion that the inter-American indigenous community could achieve; 2) progressive recognition by Member States of the full “subject status”,⁵³ under international law, of indigenous peoples; 3) strong leadership from the President of the main negotiating body (the working group of the Permanent Council responsible for this specific negotiation⁵⁴); and 4) concrete, financial measures from OAS executive units supporting the effective and meaningful participation of indigenous peoples in the discussions.

A. High Degree of Organization of Inter-American Indigenous Representatives

In the late 1990s, the Caucus of Indigenous Peoples of the Americas (Caucus) was created with the mandate of coordinating indigenous peoples’ positions with respect to the different articles of the *Draft Declaration*.⁵⁵ Since then, it meets regularly during the two days prior to the working group’s session. Over the years, the Caucus has been able to develop a single, coherent, consensus-based position on the different aspects of the *Draft Declaration* for its dialogue with states. This consensus-based strategy has been key to increasing the capacity of indigenous peoples to influence the process.

B. Progressive Recognition by Member States of the Status of Indigenous Peoples

Progressively, states became more and more aware of the need for indigenous peoples to take part directly in the negotiations. As a first step, indigenous representatives were allowed to observe the process, and to make opening and closing comments at the beginning and end of each session. Two events brought about the progress that led to the direct participation of indigenous peoples within the negotiation process.

The first of these key moments occurred in 1999, when the delegate from Antigua and Barbuda ceded his country’s seat at the negotiations table to an

⁵³ We are referring to the concept of “subjects of rights”.

⁵⁴ The Working Group was launched in 1999, as a result of resolution 1610 of the GA, with the task of considering adequate participation of indigenous rights. At the time, Canada and the US closely collaborated with this group. But it was only after insistent demands from the indigenous peoples themselves that the participatory mechanisms began to open more significantly. See OAS, General Assembly, 29th Sess., *Proposed American Declaration on the Rights of Indigenous Population*, OR OEA/AG/Res.1610 (XXIX-O/99) (1999).

⁵⁵ See the official website of the Caucus of Indigenous Peoples of the Americas, online: Caucus of Indigenous Peoples of the Americas <www.ipcaucus.net/>.

indigenous representative from Chile (which incidentally did not please the Chilean Delegation, but nevertheless had a powerful effect on the subsequent consideration that was to be granted to indigenous peoples' direct participation).⁵⁶ The second event occurred in 2000 when indigenous representatives massively walked out of the negotiating room as an expression of their dissatisfaction with the limits of indigenous participation procedures.

By 2001, indigenous representatives were sitting directly at the negotiations table; one year later, they were allowed to intervene during the negotiation process whenever they deemed it necessary. Still now, indigenous representatives from the Caucus give presentations at the beginning and end of each session, but the role of these presentations is now to determine expectations for the session, and to assess and evaluate the results of the discussions. From 2003 on, they took part in discussions as equal participants.

This would never have been possible without the strong leadership of the successive presidents and vice-presidents of the working groups.

C. Strong Leadership from Presidents of the Working Group

From 2000 until now, various presidents and vice-presidents succeeded each other at the head of the Working Group on the *Draft Declaration*. They all took a personal interest in ensuring that indigenous peoples would be granted satisfactory participation mechanisms. Notably, Guatemala and Peru facilitated the steps needed for an increased presence of indigenous representatives in the discussions.

D. Concrete Support from Official OAS Executive Unit

One of the OAS's key mechanisms, which had a decisive impact on the ability of Indigenous Peoples to truly influence the negotiation process, was the OAS Permanent Council's Specific Fund to Support the Elaboration of the *American Declaration on the Rights of Indigenous Peoples* (a fund generated by voluntary contributions).⁵⁷ Firstly, the Voluntary Fund is administered through a committee composed of the acting President and Vice-President of the Working Group, but also of three indigenous representatives, who grant bursaries to indigenous participants in the negotiation sessions. It is through this OAS funding mechanism that the Indigenous Caucus has been able to hold its two-day consensus meeting prior to the Working Group sessions and be fully active in the negotiations. It has had a tremendous impact on the capacity of indigenous peoples to reach a consensus and to

⁵⁶ The Delegation of Antigua was followed by that of Barbados in this important political gesture. However, altogether the seats added up to only three.

⁵⁷ This Fund was put in place as a result of resolution 1780 of the GA, which also instructed States to provide indigenous peoples with juridical counselling during the negotiation phase. See OAS, General Assembly, 31st Sess., *American Declaration on the Rights of Indigenous Peoples*, OR OEA/AG/Res.1780 (XXXI-O/01) (2001).

develop the expertise necessary to participate meaningfully in the process.

One may ask whether or not the participation of indigenous peoples has truly had a positive impact on the development of human rights standards. At this point in time, negotiations are evolving at a slow pace,⁵⁸ with states and indigenous representatives wondering if there is a need for an inter-American instrument now that the corresponding UN Declaration has been adopted.⁵⁹ However, in terms of transparency, awareness-raising among decision makers, and the creation of new spaces for the primary beneficiaries of the projected norms, it is certainly an important victory.

IV. Assessment and Concluding Remarks

When assessing the concrete results of social efforts in light of the desired impacts on formal institutions, one is always tempted to dismiss the few small steps that have been accomplished. In much the same way, the concrete progress generated by the two initiatives examined in this paper could easily be marginalized. After all, the Coalition represents only a small fraction of civil society presence in OAS fora, and its gains in terms of the strengthening of the human rights system are fragile: in the English-speaking countries of region, ratification of the core regional human rights instruments is hardly considered; inter-American human rights organs are still under-funded; transversality (let alone “primacy”) of human rights remains a largely ignored concept; and most sadly, the recommendations and decisions of the Commission and Court continue to be only partly implemented. And despite the unprecedented representation of indigenous peoples in key OAS discussions, the system still lacks its own normative instrument for the protection of this specific set of rights.

What then, have been the *true* impacts of the participation of these non-state actors on the inter-American human rights system? There is no doubt that there have been benefits, even if they are scarce. This article has shown that although the *Inter-American Democratic Charter* still lacks a mechanism to fully take the input of civil society and official human rights institutions into account when assessing the state of democracies, the inter-American democratic standard will henceforth reflect human rights considerations. It is only a timid first step, but it is a decisive one. Likewise, although bilateral free trade agreements and regional security arrangements may be negotiated across the continent in a manner completely disconnected from regionally recognized human rights norms, breakthroughs can happen; and they have, as demonstrated by the specific human rights clauses that organizations have been able to secure in other fields’ international instruments. Subsequent reform processes have seen organizations become disjointed, and at times divided, but always determined to counter backlashes. The candidacies of Commissioners and Judges of the Court are

⁵⁸ The Indian Law Resource Center (ILRC) provides an update on advancements in negotiations, online: ILRC <<http://www.indianlaw.org/en/projects/ihr/oas/draft>>.

⁵⁹ *Declaration on the Rights of Indigenous Peoples*, UN GAOR, 61st Sess., Annex, UN Doc. 61/295 (2007).

scrutinized at every election; regressive national human rights situations are condemned every year; and although the adoption of an Inter-American Declaration on Indigenous Peoples is still awaited, there is no doubt that if it happens, its norms will truly represent the “rights” of what is now a unified front of a diversity of peoples.

Admittedly, these are tiny little steps. However, while they are being made, progress is being achieved in relation to the opening of participatory channels in decision-making. These mechanisms, although still imperfect, are paving the way towards more and more influence, for interested groups, on the decisions that impact their lives. For in the end, the goal is for the very people affected by the decisions to be able to meaningfully take part in their making. At the OAS, the recognition of this principle was in no way spontaneous; it was granted after much time and hard work, and still has many restrictions as a result of constant surveillance, presence, and pressure by civil society representatives.

There are many reasons why the concrete results of participatory initiatives seem limited. Several are due directly to the participatory institutional framework that was reviewed at the beginning of this paper. For example, the timely provision of prior information, central to any participation process, is a rule that is sometimes too widely interpreted at the OAS.⁶⁰ Even more limiting is the requirement that CSO interventions at participatory events be directly linked to pre-determined themes.⁶¹ This dilutes, when it doesn’t outright marginalize, the very foundations of the notion of human rights. It does so even more as the number of sectors requesting an opportunity to engage with state representatives continues to grow at a fast pace.⁶² The question of the responsibility of Member States towards the Organization’s protection of human rights (and the very relevant corollary questions raised by indigenous peoples with regard to whose human rights are protected, which rights exactly, and how) then ends up marginalized alongside a long series of claims. It is not that a diversity of claimants is undesirable;⁶³ but rather that the three minutes granted to the Coalition (a vast network consisting of many organizations) to make its point before state representatives is insufficient to fully address the all-encompassing

⁶⁰ Too often, the documents that are effectively circulated are secondary. This raises the question of transparency and, in practical terms, impedes the timely consultation of relevant documents, which are indispensable to meaningful civil society participation in key decisions. Patterns of documentation distribution also differ according to the degree of sensitivity of discussion topics. For example, there was complete transparency during the negotiations on the *Declaration on Security in the Américas* whereas it was practically impossible to access the documents being discussed at the Summit of the Americas in Monterrey.

⁶¹ Civil society participation at the GA is tied to the annual theme of the Assembly. Sometimes the theme leaves room for human rights to be addressed; sometimes it does not.

⁶² Adding to this “dilution” problem is the fact that the abovementioned preparatory meetings organized by the CISC try to get participant organizations to reach a consensus on the different issues they examine. Although it is clear that a certain unity is necessary (to present written summaries of civil society concerns and deliberations to state representatives, for example) this procedure makes dissensions, nuances and subtleties completely invisible.

⁶³ In fact, the growing representation of a variety of sectors must be celebrated. Among “actors” who are noticeably gaining voice: people of Afro-descent who are following the development of negotiations on the expected *International Convention on the Elimination of All Forms of Racial Discrimination*, 7 March 1966, 660 U.N.T.S. 195 (entered into force 4 January 1969); LGBTs; and others.

problem of human rights protection in the region.

High-level state representatives should take the responsibility of attending the dialogues the OAS organizes for them very seriously. As things stand now, they do not. Indeed, very few Foreign Ministers (the entitled Heads of Delegations) attend these meetings. If the issue is of a practical nature (i.e. the event takes place too long before the official opening session), then it should be resolved urgently. If the problem is more fundamental, it should be addressed frankly. Ministers could greatly benefit from genuinely listening to civil society organizations and from giving meaningful answers to the questions and concerns these organizations express. To date, apart from a few notable exceptions,⁶⁴ “Dialogues” have not been dialogues, but a long series of unrelated monologues. This might seem interesting at first glance (some states take the opportunity to announce what their official stance on certain issues will be), but at the end of the day, it makes the participatory “gymnastics” pointless.

But the most striking problem with OAS participatory institutionalism relates to the lack of follow-up mechanisms. To date, no instrument has been devised to effectively monitor the extent to which states representatives do take account of CSOs’ voices. Interactions are really only “consultations”; and whether or not these consultations are worthwhile is still unknown.

Of course, organized civil society networks have their own internal weaknesses, and they are not immune to strategic errors. It was certainly not easy to get such diverse indigenous peoples to come together and adopt a common position on a matter so important to their future. As for the Coalition, it has faced a series of challenges ranging from substantial internal divisions to mere technical difficulties, which have made it less mobilized and active. The fact that, after years of efficient coordinated lobbying and direct interlocation, it now finds itself struggling with participatory mechanisms whose real impact is still unclear, does nothing to help. Above all, the question of whether, in the long run, the inter-American human rights system will continue to have the potential to attract such involvement from civil society organizations—as from the indigenous peoples or other types of networks, for that matter—will have to be addressed in the very near future.

⁶⁴ The Dialogue conducted at the GA of Chile in 2003 was one of these few notable exceptions.