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## Toward Fair Play: A Decade of Transformation and Resistance in International Human Rights Advocacy in Brazil

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In conferences and panels on human rights practice in Brazil, I often resort to a simplified analogy between soccer matches and international human rights litigation and advocacy, one certain to be understood in the world's premier soccer nation. The analogy concerns the expectations that a player or team brings onto the field at the beginning of any match, and those of a litigant (or attorney) seeking to bring her case before an international human rights oversight body.

To begin, I tell the audience that the players expect fair play: that the other team has recognized the competition itself and its rules; that the other team has joined a league or confederation and has ceded to that body some control over the match; that the other side will respect the rules that have been established for match play and will abide by the determinations of the judges and referee during the course of the match. Finally, and perhaps most importantly, players expect that the other team will respect the final outcome of the match and will assume the consequences inherent in that decision. When the match decides a championship, one team expects that the other will surrender the championship trophy.

Were soccer more like international human rights litigation, it would be an odd spectacle: teams would often play uncontested matches, flagrant fouls would be committed without penalties, players would routinely disregard the referees' rulings, and the losers would often return home self-declared victors. How does one play in these circumstances?

As in most of the developing world (and in many developed states), the greatest challenge facing human rights lawyers in Brazil is the inherent weakness of the

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mechanisms established to oversee compliance with treaty norms and assure implementation of decisions by international bodies within the country. In direct contrast with the practice of law as taught in law school, much of the practice of international human rights advocacy concerns how best to respond when the state does not comply with or even acknowledge the fundamental presumptions that underlie the legal process. Such noncompliance runs the gamut from the non-ratification of a treaty, the failure to recognize the oversight jurisdiction of a UN Committee or regional body, the failure to follow deadlines and other procedural norms during litigation, or the failure to implement the recommendations and determinations of international bodies.

## I. RULES OF ENGAGEMENT

States may not recognize the jurisdiction of international oversight bodies without first ratifying the treaties that establish these bodies. Largely due to its misguided belief that it had achieved a racial democracy, and thus would not suffer adverse consequences, the Brazilian military government ratified the International Covenant on the Elimination of All Forms of Racial Discrimination in 1968. Some two decades later, during its transition to democracy and in the first years of its post-transition civilian government, Brazil ratified the remaining five United Nations core human rights treaties, as well as the American Convention on Human Rights, the principal rights treaty in the inter-American system of the Organization of American States ("OAS").<sup>1</sup> Yet notwithstanding its recognition of these international agreements, Brazil refused to accept the jurisdiction of the oversight bodies created by the treaties themselves for a decade after its ratification of the last of these seven treaties. The lone exception to this rule was Brazil's recognition of the Inter-American Commission on Human Rights ("IACHR" or "Commission") individual complaints mechanism, which is an implied consequence of OAS membership even without ratification of the American Convention on Human Rights.<sup>2</sup> Over the course of 2002,

1. Brazil ratified the six core human rights treaties in the following order: the International Convention on the Elimination of All Forms of Racial Discrimination (Mar 27, 1968); the International Convention on the Elimination of All Forms of Discrimination Against Women ("CEDAW") (Feb 1, 1984); the Convention against Torture and Other Cruel, Inhuman and Degrading Treatment (Sept 28, 1989); the Convention on the Rights of the Child (Sept 25, 1990); the International Covenant on Civil and Political Rights (Jan 24, 1992); and the International Covenant on Economic, Social and Cultural Rights (Jan 24, 1992). See Office of the United Nations High Commissioner for Human Rights, *Status of Ratifications of the Principal International Human Rights Treaties* (2002), available online at <<http://www.unhchr.ch/pdf/report.pdf>> (visited Sept 25, 2002). Brazil became a party to the American Convention on Human Rights on September 25, 1992. See Organization of American States, Secretariat for Legal Affairs: Technical Secretariat for Legal Cooperation Mechanisms, B-32: *American Convention on Human Rights "Pact of San Jose, Costa Rica"*, available online at <<http://www.oas.org/juridico/english/Sigs/b-32.html>> (visited Sept 25, 2002).
2. Indeed, even without ratification of the American Convention on Human Rights, a state may be held liable for violations of the rights enshrined in the American Declaration on the Rights and

the Brazilian government recognized the jurisdiction of the United Nations treaty bodies that oversee racial and gender-based discrimination.<sup>3</sup> While this advance promises new avenues for rights defense in future matters, because potential petitioners must comply with the exhaustion of domestic remedies rule prior to petitioning these Committees, the measures have yet to result in filings against Brazil.

In theory, all persons and groups in any member state of the OAS can petition the IACHR.<sup>4</sup> Over the years, thousands of individuals and non-governmental organizations ("NGOs") throughout the Americas have made use of the individual petition process. Nonetheless, until May 1994, of the hundreds of cases pending before the IACHR, only two concerned Brazil.<sup>5</sup> When I began work with Human Rights Watch and the Center for Justice and International Law ("CEJIL") in the final months of 1992, we decided to file, systematically, exemplary petitions denouncing the principal forms of rights abuse that Americas Watch had documented against Brazil. Given Human Rights Watch's exclusive focus on civil and political rights at the time,

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Duties of Man, in accordance with the terms of the Charter of the Organization of American States as modified by the Protocol of Buenos Aires of 1967 and subsequent protocols. See Protocol of Buenos Aires, Feb 27, 1967, arts 31, 43, 52, 113, 721 UNTS 324, 330, 336-38, 342-44, 366. By contrast, in the United Nations system, ratification of a given core treaty by itself does not authorize the relevant oversight body to receive and process individual complaints alleging violations of the rights protected in the particular treaty.

3. In April 2002, Brazil recognized the jurisdiction of the Committee on the Elimination of All Forms of Racial Discrimination to receive and process individual petitions alleging violations of the International Convention on the Elimination of All Forms of Racial Discrimination ("CERD"). Under the terms of article 14 of the CERD, a state may authorize the CERD Committee to receive and process petitions alleging violations of the rights enshrined in the treaty. International Convention on the Elimination of All Forms of Racial Discrimination, opened for signature Mar 7, 1966, art 14, 660 UNTS 212, 230-32. On June 28, 2002, the Brazilian government deposited its instrument of ratification of the Optional Protocol of the Convention on the Elimination of All Forms of Discrimination Against Women. See Office of the United Nations High Commissioner for Human Rights, *Status of Ratifications of the Principal International Human Rights Treaties* (cited in note 1). At this writing, while the government had announced plans to recognize the jurisdiction of the other two UN Conventional bodies authorized to investigate and issue determinations in individual matters (the Human Rights Committee of the International Covenant on Civil and Political Rights, and the Committee against Torture of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment), it had not yet subjected itself to their jurisdiction.
4. Article 44 of the American Convention states: "Any person or group of persons, or any nongovernmental entity legally recognized in one or more member states of the Organization, may lodge petitions with the Commission containing denunciations or complaints of violation of this Convention by a State Party." American Convention on Human Rights: "Pact of San José, Costa Rica", Nov 22, 1969, 1144 UNTS 144, 155.
5. It should be noted that during the military dictatorship, petitioners brought a small number of cases before the Inter-American Commission alleging violations of the American Declaration of the Rights and Duties of Man. Flávia Piovesan, in her review of litigation before the inter-American system, cites nine cases involving torture and arbitrary detentions filed from 1970-74, during the military dictatorship. See Flávia Piovesan, *Direitos Humanos e o Direito Constitucional Internacional* 275 n 315 (Max Limonad 3d ed 1997).

as well as the restrictions within the system on petitioning in cases of economic, social, and cultural rights abuse, we sought out exemplary cases to be filed with the Commission in the following focus areas: police brutality, abysmal prison conditions (including riots suppressed with fatal violence), violence against women, violence against children living and working on the streets, targeted abuses committed during Brazil's military dictatorship, the continued impunity for human rights violators from that era, violence against indigenous peoples, rural violence, and forced labor. Our ongoing research and on-site investigations into these abuses provided more than ample raw material to draft representative petitions.

In late 1992, we filed petitions against Brazil to denounce the October 2, 1992, massacre at the Carandiru prison complex in the city of São Paulo, the 1985 murder of rural activist João Canuto in Rio Maria, Pará, and a series of fatal forced labor cases in the Amazon region. While these petitions met the formal requirements for admission, the IACHR simply failed to process them, possibly, at least in part, due to pressure by the Brazilian government.

In the meantime, Brazilian rights groups failed to make use of the petition process. In May and June 1994, the IACHR opened seven cases that had been submitted by Americas Watch and CEJIL. Over the course of 1994 and 1995, the Commission opened several other petitions filed by these two NGOs as well as others filed by rights groups based in Rio de Janeiro and São Paulo.

Despite these efforts, the total number of cases pending against Brazil by late 1998 remained at fewer than thirty according to our estimates, constituting roughly 3 percent of the total pending before the Commission.<sup>6</sup> As a result, training Brazilian rights activists to use the inter-American system became one of my highest priorities.

Diversifying the field of attorneys and professionals trained to use the system would prove critical for enhancing its effectiveness in Brazil for several reasons. First, a broader range of litigants would guarantee a broader range of issues presented to the system. Second, bringing Brazilian civil society into the system would undermine attempts by the Brazilian state to classify litigation as some sort of imperialist intervention in Brazil. Finally, expanding the range of litigants would necessarily expand the demand for increased engagement by the state before the inter-American system.

Over the past several years, a number of Brazilian petitioners (many of whom I have had the privilege of training) have begun to make use of the inter-American system, causing the number of cases pending against Brazil as of 2001 to rise to 51 (of the total of 930), according to the Commission. While undoubtedly a significant

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6. While figures on cases pending in 1994 are not available, figures for 1997–2001 demonstrate that for each of these years, between 930 and 976 cases were being processed each year by the Commission. See Inter-American Commission on Human Rights, *Annual Report 2001*, ch III, table d, available online at <<http://www.iachr.org/annualrep/2001eng/table.d.htm>> (visited Sept 24, 2002).

increase, the number is still lower than in other, smaller Latin American nations. For example, according to the same report of the IACHR, there were 143 cases pending against Peru, 95 against Ecuador, 82 against Colombia, 73 against Guatemala, 62 against Trinidad and Tobago, and 57 against Argentina.<sup>7</sup>

A better measure of the increase in the use of the system is the annual number of petitions received per country. In 2000, the Commission opened a record number of cases against Brazil. Of the 110 cases opened by the Commission that year, 13 were against Brazil, followed by Colombia, Ecuador and the United States, each with 11 cases opened.<sup>8</sup> In 2001, the Commission opened 9 cases against Brazil, second only to Peru, with 15 and Venezuela, with 11.<sup>9</sup> Still, when these figures are considered in relation to the size and population of the countries involved, the use of the system against Brazil continues to be relatively limited.

As a result of Brazil's late entry into the inter-American system, one of the key challenges presented to international human rights lawyers in Brazil has been to find ways to coax, persuade or force the Brazilian government to engage the inter-American system seriously. As noted above, the most immediate measure to change the government's approach to the system was to file petitions before the Commission and to encourage Brazilian rights groups to engage the system through training courses and internships.<sup>10</sup>

While training activists to file petitions has been a difficult and time-consuming task, it has been far less daunting a challenge than persuading the Brazilian government to engage the system once activated. Achieving state engagement and good faith participation—which, in the soccer analogy, corresponds to respect for the rules of the match and the decisions of the judges and referees—has been and continues to be the major challenge for human rights litigation in Brazil.

Brazil, like many of its counterparts in the Americas, routinely disregards the procedural norms of the system. In the first cases against Brazil, the state's failure to engage the system reached embarrassing levels. Official state responses to our detailed petitions outlining extensive violations and substantiating legal claims often came in

7. See Inter-American Commission on Human Rights, *Annual Report 2001*, ch III, table a, available online at <<http://www.iachr.org/annualrep/2001eng/table.a.htm>> (visited Sept 24, 2002).
8. See Inter-American Commission on Human Rights, *Annual Report 2000*, ch III, table d, available online at <<http://www.iachr.org/annualrep/2000eng/chap.3.htm#B>> (visited Sept 25, 2002).
9. See Inter-American Commission on Human Rights, *Annual Report 2001*, ch III, table f, available online at <<http://www.iachr.org/annualrep/2001eng/table.f.htm>> (visited Sept 25, 2002). The Global Justice Center, in conjunction with co-petitioners, submitted six cases that were opened by the Commission during 2001.
10. Over the past eight years in Brazil, I have led some twenty training courses in the inter-American and United Nations systems and have given scores of lectures at universities, bar association gatherings, and human rights colloquia and seminars to stimulate interest in petitioning the system. For the past two years, the Global Justice Center, with the support of the Ford Foundation, has led a program of intensive, on-site training courses for lawyers in our Rio de Janeiro offices and before the sessions of the Inter-American Commission in Washington.

the form of one paragraph assertions—often many months after the deadline—that domestic remedies had not been exhausted. At the same time, we knew unofficially that many governments were applying pressure on the Commission, often successfully, to keep cases from advancing in accordance with the system's procedural norms. By the end of 1995, Human Rights Watch decided to make this information public in an effort to render the system more transparent. The organization's 1996 annual report thus states:

The work of the commission was marred in 1995 by the deficient performance of its secretariat. Over the course of the year, management anomalies made it nearly impossible to discern what, if any, criteria were used to guide the secretariat's proceedings. ... Other procedural irregularities included unwarranted delays in the release of reports ... [and] arbitrary and illegal refusal to admit new complaints ... . [S]ome government representatives were able to use personal or political influence with the secretariat, thus undermining the independence of the commission ... .<sup>11</sup>

One of the questions that the system, as well as the litigants, face in this situation is whether the failure to comply with a given procedural norm at any point in a particular litigation is sufficiently grave that it should lead the petitioner to seek a default judgment against the state. In other words, when should a litigant insist that the state's failure to observe the rules of procedure constitutes grounds for a determination in favor of the petitioner? How long should an individual litigant wait to denounce state failure to follow procedure in the hopes that the state will eventually engage in the matter in a meaningful fashion?

As in a professional soccer match, in a system in which both parties clearly respect the rules of engagement and in which the oversight body has the power to enforce its decisions, breach of the rules will always be denounced promptly because the failure to follow these rules is likely to result in some penalty, including loss of the underlying substantive claim. In contrast, in the case of international human rights litigation, advocates will rarely want to win on procedural grounds. This is because international litigation rarely aims to achieve a technical, legal victory. Instead, it tends to seek the vindication of the justness of the client's cause, a goal better achieved by a determination on the merits than by a victory on procedure.

However, even with a default judgment at hand, the victim and her counsel are far from finished. Nowhere was this dilemma clearer than in the case of the 42nd Police District, Parque São Lucas, São Paulo, which concerned the massacre of eighteen prisoners following an aborted escape attempt in February 1989. After eight years of litigation in which the Brazilian state consistently and repeatedly missed deadlines and failed to engage the system seriously, the Commission prepared a final report condemning the state of Brazil for violations of the American Declaration and

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11. Human Rights Watch, *World Report 1996: Events of 1995* 67 (Human Rights Watch 1995). To be fair, in the years since this critique, the Commission's secretariat has advanced significantly in terms of its impartiality and the transparency of its procedures.

the American Convention on Human Rights. Shortly before that report was in its final phase of consideration for publication, the Brazilian government expressed its interest in reaching a friendly solution. Our instinctive response was to reject the proposal. Why, we thought, should we reward the state for its repeated failures with the opportunity to avoid its first condemnation by the Commission since its 1992 ratification of the American Convention on Human Rights?

However, on closer analysis we realized that the position of the Brazilian state was far from monolithic. While the Ministry of Foreign Relations had demonstrated little concern with the case throughout the proceedings, the recently created National Human Rights Secretariat and the local authorities in São Paulo state showed genuine interest in resolving the matter. We agreed to meet in the Commission's Washington headquarters with representatives of the Ministry of Foreign Relations and the Commission itself. In that meeting, it became clear to us that while the Ministry representatives were prepared to offer very little in terms of a solution, their counterparts in São Paulo, where the violations had occurred, were more willing to make what for us were critical concessions. In the initial Washington meeting, we responded to the Ministry's inability or lack of interest in assuming commitments that would have to be undertaken by local authorities by recommending a second, follow-up negotiation with those very authorities in São Paulo. In that follow-up meeting in Brazil, which was attended by high-ranking state officials and the National Human Rights Secretary, we managed to obtain the key points we sought for the victims in the case: substantial compensation for their families, prosecution of those responsible in the ordinary courts rather than in specialized military tribunals, and public recognition by the government of its responsibility for the killings. In the end, the decision to overlook repeated procedural violations paid off: the terms that we were able to negotiate through the friendly settlement exceeded any reasonable expectations of government implementation of these recommendations had they been included in a final report.

## II. WHEN DO CASES CREATE IMPACT?

Beyond achieving results in individual cases, international human rights litigation seeks to affect human rights practices through changes in policy. However, the connection between individual cases and policy, the effect of decisions in particular cases, and the degree to which these decisions themselves are implemented is far from clear.

In Brazil, the degree of impact has not varied in relation to the importance of the inter-American system's action in a given case, but instead has been a function of media and public interest in the matter, and the extent to which the government has been pressured to respond (ordinarily, though not exclusively, through the media). Thus, for example, several final reports have been issued with hardly a single registry in the national media and virtually no concrete action by authorities to implement the



Commission's recommendations. By contrast, in many other cases, the mere fact that the Commission has chosen to open a case—a largely bureaucratic decision prior to any adjudication—has created a media reaction and forced an official response. In many instances, the media has not reacted to the actions of the Commission at the key moments in the litigation, but rather has responded in accordance with a different agenda established within Brazil. Thus, for example, when the Commission issued its final report holding the Brazilian state responsible for the October 1992 massacre of 111 prisoners in the Carandiru prison complex, the most serious single human rights violation in recent Brazilian history, the matter hardly registered in the media. Yet in the days immediately preceding the June 2001 trial of the commander of the Carandiru massacre, Col. Ubiratan Guimarães, the media provided ample coverage of the Commission's report. A similar result followed in the case of a series of homicides of young boys in Maranhão state denounced by the Marcos Passerini Center in conjunction with the Global Justice Center in July 2001. While the Commission's decision to open the case provoked a moderate media response, the October murder of two more boys in similar circumstances led the domestic and international press to provide extensive coverage of the involvement of the inter-American system in the case. This pressure, in turn, led the Ministry of Justice to place the Federal Police at the disposition of state authorities to assist in the investigation. The pressure, provoked in large part by the Commission's involvement in the case and the media coverage, eventually forced Maranhão governor and then leading presidential candidate Roseana Sarney to accept federal investigation of the killings.

In particular, one finds that the impact of the Commission's decisions, whether to open a case or to hold the state responsible and demand concrete measures, depends largely on a series of extra-legal factors. Primary among these is the role of the media. While analysis of a decade of work with the domestic and international media based in Brazil is beyond the scope of this article, I could not seriously reflect on the impact of human rights work in Brazil without addressing the role of the fourth estate. A significant part of human rights activism in Brazil involves use of the press to put pressure on the government in individual cases and on policy issues. Years of litigating before the inter-American system and researching and producing human rights reports has taught me how to work with the media. This experience was of such consequence that we decided, in all training courses overseen by the Global Justice Center, to include training for human rights professionals on the effective use of media. The course—pitched not to press officers but to lawyers and other professionals—focuses on issues such as how to draft a press advisory or release, how to tie the release of information (reports, litigation details, etc.) to salient issues, how to conduct an interview with domestic and international media, and the importance of drafting op-ed pieces for publication in major journals.

Unfortunately, the expectations of advocates engaged in international human rights litigation are least frequently met by states once decisions have been rendered against them. That is, the vast majority of the decisions of international oversight

bodies are not fully implemented by the states against which these decisions are taken. Fortunately, member states of the OAS have routinely accepted the legitimacy and binding nature of the decisions of the Inter-American Court, the system's court of last appeal. But even these determinations are not always uniformly respected.

Recently, I have had the opportunity to participate in the first case against Brazil to be heard by the Inter-American Court of Human Rights in San José, Costa Rica. The case involves the Urso Branco penitentiary in distant Rondônia state, in which both official brutality and prisoner-on-prisoner violence have claimed the lives of a shockingly high number of prisoners. The most violent recent clash—a two day riot in which authorities manipulated rivals within the prison to promote a riot and then failed to take measures to stop the ensuing twenty-hour killing spree—left twenty-seven detainees dead in January 2002. Given the repeated acts of violence and loss of lives in other instances of violence after this massacre, the Global Justice Center sought precautionary measures from the IACHR. Even after these were granted, five detainees were killed over a period of two months. Based on these killings, incidents of beatings and torture, and constant threats made by guards and police against detainees, we requested that the IACHR seek provisional measures from the Inter-American Court. For the first time in history, the Commission solicited these measures from the Court, which, in an unprecedented and sweeping decision, granted the request in June 2002.<sup>12</sup>

Despite the decisions by both the Commission and the Court, it has been extremely difficult to force the isolated authorities in Rondônia state to cede to international pressure. While federal authorities—far more sensitive now to the international stigma attached to litigation before the Inter-American Court—have demonstrated interest in complying with the system's orders, they have been either unwilling or unable to force local prison administrators, guards, and police to alter their abusive policies. The *Urso Branco* case is illustrative of the type of stubborn refusal to accept the determinations of international bodies that characterized the position of federal authorities for years after treaty ratification. While years of work to increase use of the inter-American system as well as parallel media pressure by activists have produced results at the federal level and with the most progressive states, *Urso Branco* demonstrates that a great deal must still be done to bring even the idea of human rights and international supervision to much of Brazil.

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12. Inter-American Court of Human Rights, *Resolución de la Corte Interamericana de Derechos Humanos de 18 de junio de 2002, Medidas Provisionales Solicitadas por la Comisión Interamericana de Derechos Humanos Respecto de la República Federativa del Brasil, Caso de la Cárcel de Urso Branco 7*, available online at <[http://www.corteidh.or.cr/Serie\\_e\\_UB18602\\_esp.doc](http://www.corteidh.or.cr/Serie_e_UB18602_esp.doc)> (visited Sept 24, 2002).

### III. BRAZILIAN CIVIL SOCIETY AND THE SPECIAL MECHANISMS OF THE UNITED NATIONS COMMISSION ON HUMAN RIGHTS

Given the shortcomings of the individual complaints mechanism, Brazilian civil society in recent years has turned to the special mechanisms of the United Nations. The Human Rights Commission of the UN is a less legal and more political forum than are the Inter-American Commission and Court.<sup>13</sup> Moreover, the decisions of its mechanisms lack the force of decisions of the Conventional committees. The UN's working groups and special rapporteurs have been created on an ad hoc basis by resolutions approved by the Commission on Human Rights.<sup>14</sup> The flexible nature of the information receipt function of the special mechanisms provides rights activists an important avenue of denunciation, which is not immediately available in the inter-American system due to the latter's requirement that petitioners first exhaust domestic remedies or present a valid exception.<sup>15</sup> As a result of this difference, activists may denounce a rights violation to a special mechanism hours or days after its occurrence, something not possible in the inter-American system. While the special mechanisms procedure is less formal (indeed, it does not constitute a legal evaluation), it is more rapidly accessible.<sup>16</sup>

13. While members of the Inter-American Commission serve in their "personal capacit[ies]" and judges of the Inter-American Court in their "individual capacit[ies]," see American Convention, arts 36(1) and 52(1), 1144 UNTS at 154, 157-58 (cited in note 4), the members of the United Nations Commission on Human Rights are states, representing their own political interests.
14. The specific mandate of each special mechanism is established by its originating resolution. While these mandates vary to some degree, there is a series of similarities among the mechanisms. First, the working group or special mechanism is charged with a particular issue (torture, women's rights, summary executions, the rights of human rights defenders, the right to food, etc.). Second, the special mechanism is charged with the duty of receiving and seeking information about the abuse on a global basis. Third, these special rapporteurs and working groups are required to report their findings on an annual basis to the Commission on Human Rights, during its sessions between March and April, and, in some cases, the Secretary General. Fourth, these mechanisms may (though they are not required to by their mandates) forward information received from individuals to governments, ordinarily in the form of diplomatic requests for information. Fifth, upon invitation by the state concerned, these special rapporteurs and working groups may visit countries to investigate the situation of the particular human right defining their particular mandate. Sixth, the receipt and use of information regarding violations in a particular case does not constitute international legal adjudication of the matter. As a result, in order to forward information on particular cases, individuals are not required to exhaust domestic remedies.
15. International courts and quasi-judicial bodies routinely require that petitioners exhaust domestic remedies or present a valid exception to the rule of exhaustion as a prerequisite to filing their case. For example, article 46(1)(a) of the American Convention establishes as a condition for admissibility "[t]hat the remedies under domestic law have been pursued and exhausted in accordance with generally recognized principles of international law." American Convention, 1144 UNTS at 155 (cited in note 4). Article 46(2) sets out three exceptions to the rule established in article 46(1)(a). *Id.* at 156.
16. The main limitation for Brazilian activists is that all communications sent to special mechanisms must be in one of the official languages of the United Nations (English, French, Spanish, Arabic, Chinese, and Russian) and preferably in one of the working languages (English, first, and French, second). In some cases, Spanish is considered a working language.

In the past few years, Brazilian rights groups have made increasingly effective use of the special mechanisms of the United Nations. Over the course of the past several years, my colleagues and I at Global Justice have filed information with the UN special mechanisms to denounce individual cases and have succeeded in bringing significant pressure to bear by releasing these denunciations to the Brazilian media. Other rights groups have used a similar approach, merging use of the special mechanisms and the local media.

Beyond the submission of individual cases, the Global Justice Center and a coalition of Brazilian NGOs have managed to apply more systematic pressure through the use of the visits by special rapporteurs to Brazil. In response to repeated requests by the Special Rapporteur on Torture, Sir Nigel Rodley, and pressure from Brazilian rights groups, the Brazilian government invited the Special Rapporteur to make an official visit to the country in mid-2000.<sup>17</sup> During three weeks in August and September of 2000, the Special Rapporteur visited six cities in five Brazilian states (São Paulo, Rio de Janeiro, Minas Gerais, Pernambuco and Pará), as well as the federal capital, Brasília. Brazilian civil society mobilized dozens of activists throughout the country who organized witness testimony and documentary evidence of torture and also guided the Special Rapporteur's visits to known centers of torture and inhumane treatment.

After the United Nations Commission on Human Rights scheduled the release of the report for April 11, 2001, a coalition of Brazilian NGOs in cities throughout the country organized a series of press conferences and panel discussions to release the report to the Brazilian media. On April 11, the Special Rapporteur issued a scathing report that classified the practice of torture as both "systematic" and "widespread." The Rapporteur wrote, "Torture and similar ill-treatment are meted out on a widespread and systematic basis in most of the parts of the country visited by the Special Rapporteur and, as far as indirect testimonies presented to the Special Rapporteur from reliable sources suggest, in most other parts of the country."<sup>18</sup> In addition to its conclusions, the report included 348 cases of torture about which the Special Rapporteur had gathered information during his study. Because the government anticipated the release of the report and leaked excerpts to reporters on

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17. Prior visits to Brazil had been undertaken by the special rapporteurs on racial discrimination and violence against women. See United Nations Commission on Human Rights, *Report by Mr. Maurice Glèlè-Ahanhanzo, Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance, on his Mission to Brazil, from 6 to 17 June 1995*, UN Doc No E/CN.4/1996/72/Add.1 (1996); United Nations Commission on Human Rights, *Report on the Mission of the Special Rapporteur to Brazil on the Issue of Domestic Violence (15–26 July 1996)*, UN Doc No E/CN.4/1997/47/Add.2 (1997).
  18. Commission on Human Rights, *Report of the Special Rapporteur, Sir Nigel Rodley, Submitted Pursuant to Commission on Human Rights Resolution 2000/43: Addendum: Visit to Brazil*, UN Doc No E/CN.4/2001/66/Add.2 at 54, ¶ 166 (2001) (footnote omitted).

the eve of the release, it was able to put a somewhat better spin on a disastrous assessment of torture in Brazil.

In light of these leaks, we were forced to rethink our planned events to release the report to the Brazilian media. To guarantee a critical press perspective, on April 11, our coalition organized bilingual teams to translate representative cases from among the universe of 348 incidents of torture in each of the states visited by the Special Rapporteur. We organized and distributed these translations for release in Brazil within hours of the initial release in English in Geneva.

Much to the government's chagrin, the release of the report of the Special Rapporteur generated two days of intense coverage from major media sources in Brazil. While the first day focused on the report itself, the second day focused on the substance of cases analyzed, as well as on the Rapporteur's recommendations. The degree of organization demonstrated by civil society proved decisive in bringing the federal government to recognize publicly the widespread nature of torture and to design a national campaign to combat the problem. While the campaign itself proved to be deficient in a number of respects, the use of international mechanisms by Brazilian rights groups played a key role in structuring federal government policy on a critical human rights issue in Brazil.

#### IV. CONCLUSION

The experience of the Brazilian human rights community with the visit and report of the Special Rapporteur on Torture marked a decisive step in a developing trend toward a more sophisticated approach to international oversight mechanisms. In conjunction with the expanded use of the inter-American system, it constitutes a movement toward the effective internationalization of rights activism in Brazil.

This movement has recognized that the state is not monolithic, but rather a complex, interrelated series of actors. Further, it has learned that well-designed international litigation strategies that appreciate the difference between hollow procedural victories and substantive gains, while stressing measures to mobilize the media and public opinion, offer the chance to advance the cause of human rights. On the whole, this trend has made international human rights litigation look much more like an ordered soccer match. Increasingly, reasonable expectations are being met: process is more frequently respected and, on several occasions, the Brazilian government has even recognized defeat and taken initial measures to respond to the violations denounced. Although Brazil's performance as a state before international oversight bodies may not yet be termed fair play, human rights advocates in Brazil have, over the past decade, made considerable progress toward that goal.