

The African Commission on Human and Peoples' Rights and the Inter-American Commission on Human Rights: Addressing the right to an impartial hearing on detention and trial within a reasonable time and the presumption of innocence

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Summary

Due process rights include the right to an impartial hearing, trial within a reasonable time and the presumption of innocence. This contribution considers the interpretation of these rights by two regional human rights treaty bodies, the African Commission Human and Peoples' Rights and the Inter-American Commission on Human Rights. The author concludes that the two bodies have developed a jurisprudence appropriate to the particular situation in Africa and the Americas, respectively.

1 Introduction

The human rights movement of the last 50 years has operated on many levels. To further the cause of human rights, it has crafted mechanisms at the global level, has acted through regional human rights regimes in

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Africa, the Americas, and Europe, and has influenced the actions of states internally.¹

This article addresses the way in which the African Commission on Human and Peoples' Rights (African Commission) and the Inter-American Commission on Human Rights (Inter-American Commission) have understood due process rights. Specifically, it focuses on the right to an impartial hearing on detention and trial within a reasonable time and the presumption of innocence under the African Charter on Human and Peoples' Rights (African Charter),² the American Convention on Human Rights (American Convention),³ and the American Declaration of the Rights and Duties of Man (American Declaration).⁴

2 The right to an impartial hearing on detention and trial within a reasonable time

2.1 The African experience

The question of the compatibility with the African Charter's article 7(1)(d) of trials before special tribunals dominated by the police and military arose in *Constitutional Rights Project (in respect of Akamu & Others) v Nigeria*.⁵ In this case, Wahab Akamu, Gbolahan Adegade and others were sentenced to death under the terms of the Robbery and Firearms (Special Provision) Decree No 5 of 1984, which established special three-member tribunals composed of one member of the police, one current or former judge, and one member of the military.⁶ According to

¹ At the state level, '[i]nternationally accepted ideas of the various obligations engendered by human rights indicate that all rights — both civil and political rights and social and economic — generate at least four levels of duties for a state that undertakes to adhere to a rights regime, namely the duty to *respect, protect, promote, and fulfil these rights*. These obligations universally apply to all rights and entail a combination of negative and positive duties.' Communication 155/96, *Social and Economic Rights Action Centre and the Centre for Economic and Social Rights v Nigeria* Fifteenth Annual Activity Report (2003) 10 IHRR 282 287 para 44.

² African Charter on Human and Peoples' Rights in R Murray & M Evans (eds) *Documents of the African Commission on Human and Peoples' Rights* (2001) 3.

³ American Convention on Human Rights in *Basic documents pertaining to human rights in the Inter-American system* (updated to 2003) 27.

⁴ American Declaration of the Rights and Duties of Man in *Basic documents pertaining to human rights in the Inter-American system* (updated to 2003) 17. For a general discussion of the presumption of innocence, the principle that judges must be impartial and independent and the principle of expeditious and fair trial within the context of international criminal law, see A Cassese *International criminal law* (2003) 389–400.

⁵ *Constitutional Rights Project (in respect of Akamu & Others) v Nigeria* (2000) AHRLR 180 (ACHPR 1995). See also *Constitutional Rights Project v Nigeria (II)* (2000) AHRLR 248 (ACHPR 1999) paras 19 & 20.

⁶ As above, para 1. Incidentally, two of those who were sentenced to death, Akamu and Adegade, according to the complaint, confessed after they were allegedly tortured while in custody (para 2). It is unclear how, if at all, this alleged torture factored into the African Commission's decision.

Nigerian law, '[n]o appeal shall lie from a decision of a tribunal constituted under this Act or from any confirmation nor dismissal of such decision by the Governor'.⁷ Effectively, this excluded the possibility of judicial appeal. The complaint alleged violations of article 7(1)(a) of the African Charter,⁸ because of the lack of judicial review by 'competent national organs against acts violating fundamental rights'⁹ and article 7(1)(d), because of the composition of the special three-member tribunals.¹⁰

After finding that the rule under article 56(5) of the African Charter requiring the exhaustion of local remedies¹¹ did not preclude consideration by the African Commission because the governor's power was a 'discretionary extraordinary remedy of a non-judicial nature'¹² and 'neither adequate nor effective',¹³ the African Commission reached the merits. It noted that the decision by the special three-member tribunals effectively amounted to judgment being rendered by the executive branch without the guarantee of sufficient legal expertise,¹⁴ and that the special three-member tribunals' composition created the appearance of partiality, if not partiality in fact.¹⁵ Thus, the special three-member tribunals violated the African Charter's article 7(1)(d).¹⁶

The African Commission also confronted article 7(1)(d) of the African Charter in *The Constitutional Rights Project (in respect of Lekwot & Others) v Nigeria*.¹⁷ In this case Nigeria imposed capital sentences on seven men

⁷ Robbery and Firearms (Special Provisions) Act ch 398 sec 11, para 4.

⁸ According to art 7(1)(a) of the African Charter, '[e]very individual shall have the right to have his cause heard. This comprises: (a) the right to an appeal to competent national organs against acts violating his fundamental rights as recognised and guaranteed by conventions, laws, regulations and customs in force.'

⁹ n 5 above, para 3.

¹⁰ n 5 above, para. 4.

¹¹ According to art 56(5) of the African Charter, '[c]ommunications relating to human and peoples' rights referred to in article 55 received by the Commission, shall be considered if they . . . 5. are sent after exhausting local remedies, if any, unless it is obvious that this procedure is unduly prolonged.'

¹² n 5 above, para 5.

¹³ As above.

¹⁴ n 5 above, para 12.

¹⁵ As above.

¹⁶ As above. Note that the African Commission found that Nigeria had also violated the African Charter's art 7(1)(a) because there was no right to an appeal or provision to sufficiently protect 'the fundamental rights in question, [namely] . . . those to life and liberty provided for in articles 4 and 6 of the African Charter'; n 19 above, 133 para 7. It based its finding of a violation of the right to an appeal at least in part on the belief that failure to find a violation would 'increase the risk that severe violations may go unredressed'. In this way, it acted proactively against future, and potentially far more serious, human rights violations. Nigeria had also violated the African Charter's art 7(1)(c), although the African Commission did not give specific comments in reaching its conclusion; n 19 above, 133.

¹⁷ *Constitutional Rights Project (in respect of Lekwot & Others) v Nigeria* (2000) AHRLR 183 (ACHPR 1995).

under the terms of the Civil Disturbances (Special Tribunal) Decree No 2 of 1987 for unlawful assembly, culpable homicide and breach of the peace.¹⁸ According to the terms of the Decree, there was no allowance for judicial appeal from decisions reached by the special tribunals, composed of members of the police and the military and judges.¹⁹ In addition to alleged violations of article 7(1)(d) of the African Charter, because of the composition of the special tribunals, the complaint also alleged violations of the African Charter's articles 7(1)(a) and 7(1)(c).²⁰

After finding that article 56(5) of the African Charter did not preclude an examination of the merits because 'the remedy available is not of a nature that requires exhaustion',²¹ the African Commission reached the merits. It found that the special tribunals that imposed capital sentences on the seven men fell short of the requirements of article 7(1)(d) of the African Charter because they were composed mostly of executive branch officials.²² In language exactly like paragraph 8 of *Constitutional Rights Project (in respect of Akamu & Others)*, the African Commission stated that the special tribunal's 'composition alone creates the appearance, if not actual lack of impartiality'.²³

The African Commission further explored what is meant by the right to an impartial hearing in *Law Office of Ghazi Suleiman v Sudan*.²⁴ Specifically, it addressed the trial of 26 civilians before a military court 'accused of offences of destabilising the constitutional system, inciting people to war or engaging in the war against the state, inciting opposition against the government and abetting criminal or terrorist organisation under the law of Sudan'.²⁵ Executive decree had established the military court, and out of its four members, three were active servicemen.²⁶

In its decision, the African Commission held that such a court constitutes a prima facie violation of the right to an impartial hearing.²⁷

¹⁸ As above, paras 1–2.

¹⁹ As above, paras 1 & 5.

²⁰ As above, paras 3–5. According to art 7(1)(c) of the African Charter, '[e]very individual shall have the right to have his cause heard. This comprises . . . (c) the right to defence, including the right to be defended by counsel of his choice.'

²¹ n 17 above, para 10.

²² As above, para 14. According to the terms of the Civil Disturbances (Special Tribunal) Act's Part II, Section 2(2), the special tribunals consisted of four members of the military and a judge.

²³ Note that the African Commission also found that Nigeria had violated the African Charter's arts 7(1)(a) and 7(1)(c); n 17 above, para 14.

²⁴ Communications 222/98 & 229/99, *Law Office of Ghazi Suleiman v Sudan* Sixteenth Annual Activity Report, <http://www.achpr.org/english/_doc_target/documentation.html?..activity_reports/activity16_en.pdf> 39 (2003) (accessed 31 May 2004).

²⁵ As above, para 5.

²⁶ As above, para 63.

²⁷ As above, para 64 (stating that '[t]his composition of the military court alone is evidence of impartiality [*sic*]').

According to the African Commission, '[c]ivilians appearing before and being tried by a military court presided over by active military officers who are still under military regulations violates the fundamental principles of fair trial'.²⁸ It cited its Resolution on the Right to a Fair Trial and Legal Aid in Africa during the adoption of the Dakar Declaration and Recommendations in stating that military courts should try civilians 'in no case'.²⁹ The African Commission found a violation of the African Charter's article 7(1)(d).³⁰ The enunciation by the African Commission of such an absolute rule provides clarity and contributes to the principle of legality.

Thus, an examination of the African Commission's decisions in *Suleiman, Constitutional Rights Project (in respect of Akamu & Others)* and *The Constitutional Rights Project (in respect of Lekwot & Others)* reveals that the 'impartial court or tribunal' language of the African Charter's article 7(1)(d) requires *bona fide* judicial process, not trial by military courts. The African Commission raised concerns of partiality and fairness in reaching its conclusions. Courts or tribunals, to qualify as 'impartial court[s] or tribunal[s]' under article 7(1)(d) of the African Charter, must be independent of the political branches of government, not part of them.

Outside the criminal context, the African Commission dealt with the right to a hearing within a reasonable time in *Mouvement Burkinabé des Droits de l'Homme et des Peuples v Burkina Faso*.³¹ The complainant, Halidou Ouédraogo, cited several incidents, including an assassination attempt and death threats made against him and suspicious killings by state security forces of student activists, in which Burkina Faso had allegedly failed to provide an adequate forum for redress within a reasonable time.³²

In addressing the right to be heard within a reasonable time, the African Commission dealt with the retirements, dismissals and suspensions of magistrates that took place on 10 June 1987.³³ Burkina Faso subsequently adopted a law to rehabilitate those removed from office, but the complainant and another magistrate, Compaoré Christophe, were not affected by the law and demanded compensation

²⁸ As above.

²⁹ As above, para 65 (noting that military courts 'should not deal with offences which are under the purview of ordinary courts').

³⁰ n 24 above, para 67 (stating that 'article 7(1)(d) of the Charter requires the court to be impartial. Apart from the character of the membership of this military court, its composition alone gives an appearance, if not, the absence of impartiality, and this therefore constitutes a violation of article 7(1)(d) of the African Charter.').

³¹ Communication 204/97, *Mouvement Burkinabé des Droits de l'Homme et des Peuples v Burkina Faso* Fourteenth Annual Activity Report (2002) 9 IHRR 250.

³² As above, paras 1–14.

³³ As above, para 38.

in kind.³⁴ While the facts given by the African Commission are somewhat unclear, Burkina Faso's Supreme Court had not resolved Compaoré's claim over 15 years after it had been filed.³⁵

The African Commission found that 15 years without a decision on the relief sought or the fate of the people concerned or any action at all on the case amounted to a denial of justice and a violation of the right to an impartial trial within a reasonable time.³⁶ Given the African Commission's failure to extensively comment on article 7(1)(d) of the African Charter,³⁷ and the significant length of time without action at all in the case, few would disagree with the African Commission's conclusion. One might have hoped for facts that would have allowed for a more nuanced clarification of the law, but given what many would regard as the blatant nature of the human rights violation, the decision is certainly positive.

2.2 The Inter-American experience

In *Dayra María Levoyer Jiménez v Ecuador*,³⁸ the Inter-American Commission addressed the right to a hearing on detention and trial within a reasonable time. On 21 June 1992, a group of 15 unidentified individuals, in both civil dress and uniforms, detained Jiménez without an arrest warrant.³⁹ The police failed until 30 and 31 July 1992 to issue an arrest warrant for illicit enrichment, drug trafficking, asset laundering and acting as a 'front'.⁴⁰ Nearly half a month later, between 11 and 13 August 1992, the court issued arrest warrants for Jiménez.⁴¹ Although Ecuador detained her until June 1998, the state eventually dismissed the four charges against Jiménez and released her.⁴²

The Inter-American Commission noted that the reasonableness of the duration of a trial must be determined on a case-by-case basis.⁴³ It applied a two-part test:⁴⁴

First, whether the deprivation of liberty without a conviction is justified in the light of relevant and sufficient criteria, determined objectively and reasonably by pre-existing legislation; and second, whether the judicial authorities have acted with due diligence in the advancement of the judicial proceedings.

³⁴ As above.

³⁵ As above.

³⁶ As above, para 40.

³⁷ Art 7(1)(d) of the African Charter states that '[e]very individual shall have the right to have his cause heard. This comprises . . . (d) the right to be tried within a reasonable time by an impartial court or tribunal.'

³⁸ *Dayra María Levoyer Jiménez v Ecuador* Inter-American Commission on Human Rights Case 11.992, rep n 66/01 (2003) 10 IHRR 512.

³⁹ As above, para 26.

⁴⁰ As above.

⁴¹ As above.

⁴² As above, para 19.

⁴³ As above, para 49 (fn omitted).

⁴⁴ As above.

On the facts, the Inter-American Commission found that Ecuador had violated Jiménez's right to trial within a reasonable time under article 7(5) of the American Convention.⁴⁵

After finding a violation of the right to trial within a reasonable time, the Inter-American Commission examined whether Ecuador had also violated article 8(1) of the American Convention, which guarantees the right to a hearing within a reasonable time.⁴⁶ As it had for its assessment of article 7(5), the Inter-American Commission applied a reasonableness test, a test that considers 'the complexity of the matter, the procedural activity of the individual concerned, and the conduct of the judicial authorities'.⁴⁷ It found that the almost eight years that had elapsed since the start of the investigation against Jiménez, coupled with the fact that Ecuadorian law allowed the case to remain open even after the charges had been dismissed, was an unreasonable amount of time in which to hear Jiménez's case.⁴⁸ The Inter-American Commission's language suggests that a trial that has not concluded after almost eight years will *prima facie* violate article 7(5) of the American Convention.⁴⁹

The Inter-American Commission also addressed the right to judicial decision within a reasonable time in *Milton García Fajardo & Others v Nicaragua*.⁵⁰ According to the petition, 142 customs service workers went on strike on 26 May 1993.⁵¹ Nicaragua's Ministry of Labour declared the strike illegal on the next day.⁵² In response, the workers petitioned the Court of Appeals for *amparo*, or a ruling by the Supreme Court of Justice asserting the supremacy of Nicaragua's Constitution over its labour laws, on 7 June 1993.⁵³ The Court of Appeals ordered the

⁴⁵ As above, paras 61 & 63. According to art 7(5) of the American Convention, '[a]ny person detained shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to be released without prejudice to the continuation of the proceedings. His release may be subject to guarantees to assure his appearance for trial.'

⁴⁶ According to art 8(1) of the American Convention, '[e]very person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal, previously established by law, in the substantiation of any accusation of a criminal nature made against him or for the determination of his rights and obligations of a civil, labor, fiscal, or any other nature.'

⁴⁷ n 38 above, para 91 (fn omitted).

⁴⁸ n 38 above, paras 95–96 (fn omitted).

⁴⁹ The Inter-American Commission stated that '[t]he Commission is of the view that the nearly eight years that have elapsed since the investigation began is well beyond the principle of reasonable time within which to resolve a case, especially in light of the fact that according to Ecuadorian law, even when a provisional dismissal has been issued, the case remains open for six years, a period during which the investigation may be reopened if fresh evidence is produced.' n 38 above, 527 para 95 (fn omitted).

⁵⁰ *Milton García Fajardo & Others v Nicaragua*, Inter-American Commission, Case 11.381, rep n 100/01 (2003) 10 IHRR 531.

⁵¹ As above, paras 1–2 (fn omitted).

⁵² As above, para 2.

⁵³ As above, para 3.

Ministry of Labour to rescind its dismissal of the workers pending final decision, but the customs authorities ignored the order.⁵⁴ Despite the fact that Nicaraguan law required that petitions for *amparo* be decided within 45 days, the Supreme Court did not reach a decision until 2 June 1994.⁵⁵

Clearly incensed by the Supreme Court's inaction, the Inter-American Commission found that there was 'no reasonable cause'⁵⁶ for the Supreme Court's delay and that it had acted with 'clear negligence'⁵⁷ with respect to both Nicaraguan and international procedural requirements 'by issuing a ruling that was vital to the jobs and financial security of a large number of workers and to the effectiveness of other human rights long after the respective petition in question was filed'.⁵⁸ It applied the three-part reasonableness test of article 8(1) of the American Convention⁵⁹ and found that the petitioners had satisfied each part of the test.⁶⁰ Finding 'no justification whatsoever'⁶¹ for the Supreme Court's delay in responding to the petition for *amparo* and stressing the workers' 'legal defenselessness',⁶² the Inter-American Commission found a violation of the right to judicial decision within a reasonable time.⁶³ Because *Fajardo* must be viewed within the context of a labour strike and its crippling effect on striking workers and their families, however, it would probably be inaccurate to assert that a wait of approximately one year will *always* violate article 8(1) of the American Convention. Nonetheless, from a human rights perspective, the Inter-American Commission's decision is to be welcomed.

A final Inter-American Commission decision worth exploring with regard to the right to a hearing on detention and trial within a reasonable time is *Waldemar Gerónimo Pinheiro and José Víctor Dos Santos v Paraguay*.⁶⁴ Paraguay had arrested Pinheiro in 1985 and held him in preventive detention without judicial justification until Pinheiro escaped on 27 October 1996.⁶⁵ Dos Santos was imprisoned from 1988 until

⁵⁴ As above, para 3, 540 para 49.

⁵⁵ As above, paras 52–53. (The Nicaraguan law at issue was art 47 of the Law on *Amparo* number 49.)

⁵⁶ As above, para 50.

⁵⁷ As above, para 53.

⁵⁸ As above.

⁵⁹ n 47 above and accompanying text.

⁶⁰ n 50 above, paras 54–58 (footnotes omitted).

⁶¹ As above, para 58.

⁶² As above.

⁶³ As above.

⁶⁴ *Waldemar Gerónimo Pinheiro and José Víctor Dos Santos v Paraguay*, Inter-American Commission, Case 11.506, rep n 77/02 <<http://www.cidh.oas.org/annualrep/2002eng/Paraguay.11506.htm>> (2002) (accessed 31 May 2004).

⁶⁵ As above, para 61.

9 June 1995 without judicial justification, 'logical grounds, [or] . . . cause of any kind'.⁶⁶

The Inter-American Commission found that Paraguay's use of preventive detention against Pinheiro and Dos Santos violated the American Convention's article 7(5) and the American Declaration's article XXV(3).⁶⁷ The Inter-American Commission interpreted these articles as meaning that, as a rule, preventive detention must be⁶⁸

special in nature, or in other words it must occur on an exceptional basis. Secondly, at the time it is ordered, it must be justified by the state, based on the special circumstances of each case. In the third place, excessive prolongation of pre-trial detention must be prevented.

The Inter-American Commission stated that preventive detention can only be used for the purpose of guaranteeing trial.⁶⁹ Since it did not satisfy the limited circumstances under which preventive detention could be justified, the Inter-American Commission found that Paraguay's use of preventive detention against the petitioners violated the American Convention and the American Declaration.⁷⁰

The Inter-American Commission had little difficulty in finding that Paraguay had also violated the right to a hearing within a reasonable time under the American Convention's article 8(1) and the American Declaration's article XXV.⁷¹ It noted that the 'mere passage of time does not necessarily mean that a reasonable time has been exceeded'⁷² and relied on the three-part reasonableness test⁷³ in assessing the matter.⁷⁴ The Inter-American Commission found that Paraguay had failed to satisfy each part of the reasonableness test and, therefore, had violated the right to a hearing within a reasonable time under the American Convention and the American Declaration.⁷⁵

⁶⁶ As above.

⁶⁷ As above, para 72. According to art XXV(3) of the American Declaration, '[e]very individual who has been deprived of his liberty has the right to have the legality of his detention ascertained without delay by a court, and the right to be tried without undue delay or, otherwise, to be released. He also has the right to humane treatment during the time he is in custody.'

⁶⁸ n 64 above, para 64 (footnote omitted).

⁶⁹ As above, para 66.

⁷⁰ As above, para 72.

⁷¹ As above, paras 73–80. According to art XXV of the American Declaration, '(1) No person may be deprived of his liberty except in the cases and according to the procedures established by pre-existing law. (2) No person may be deprived of liberty for nonfulfillment of obligations of a purely civil character. (3) Every individual who has been deprived of his liberty has the right to have the legality of his detention ascertained without delay by a court, and the right to be tried without undue delay or, otherwise, to be released. He also has the right to humane treatment during the time he is in custody.'

⁷² n 50 above, para 76.

⁷³ n 47 above and accompanying text.

⁷⁴ n 50 above, paras 76–80.

⁷⁵ As above, para 80.

The case-by-case approach and reasonableness test used by the Inter-American Commission in addressing the right to a hearing on detention and trial within a reasonable time in these decisions, while empowering the Inter-American Commission to develop the law over time, suffer from its flexibility and potential uncertainty. Put differently, depending on the composition of the Inter-American Commission, the case-by-case approach and reasonableness test could be used to expand human rights or restrict them. While this may be the only feasible way forward, one hopes that such an approach and test will be applied in a conscientious and consistent manner. This will both reaffirm human rights expectations and bring further legitimacy to the human rights movement.

3 The presumption of innocence

3.1 The African experience

In addition to exploring the right to an impartial hearing, *Suleiman* also examined the presumption of innocence. The complainant alleged that high-ranking government officials and investigators had publicly asserted the defendants' guilt.⁷⁶ Furthermore, alleged government-orchestrated publicity stated that the defendants were behind a *coup* attempt against the state.⁷⁷ Sudan did not conceal its bias against the defendants, showing 'open hostility towards the victims by declaring that 'those responsible for the bombings' will be executed'.⁷⁸ Because Sudan had publicly pre-judged the defendants before a proper court had established their guilt, the African Commission found that the state had violated the right to be presumed innocent under article 7(1)(b) of the African Charter.⁷⁹

The decision, although helpful in a general sense, fails to state the exact level of negative state publicity that triggers an infringement of the right to be presumed innocent under the African Charter and leaves unanswered whether *any* negative state publicity suffices to find a violation. Furthermore, the decision does not define 'negative state publicity' precisely.

⁷⁶ n 24 above, para 54.

⁷⁷ As above.

⁷⁸ As above.

⁷⁹ As above, para 56. Art 7(1)(b) of the African Charter states that '[e]very individual shall have the right to have his cause heard. This comprises . . . (b) the right to be presumed innocent until proven guilty by a competent court or tribunal.' Note that the African Commission has also found a violation of the right to be presumed innocent based on a state's negative pre-trial publicity and overly broad exclusion of the press and public from viewing a trial on national security grounds. See *Media Rights Agenda v Nigeria* (2000) AHRLR 262 (ACHPR 2000) paras 47–48.

Although the complaints in *Constitutional Rights Project (in respect of Akamu & Others)* and *The Constitutional Rights Project (in respect of Lekwot & Others)* did not allege violations of article 7(1)(b) of the African Charter, an argument could be made that special tribunals dominated by the executive branch, particularly by members of the police and the military, violate the right to be presumed innocent *in and of themselves*. This could be the case especially when the charges at trial involve issues of national security, as the executive could find it expedient to prejudge the defendant or defendants out of concern for maintaining law and order. It can at least be said that such special tribunals do not reinforce the right to be presumed innocent.

3.2 The Inter-American experience

The Inter-American Commission examined the two main presumption of innocence provisions under the Inter-American human rights regime, the American Convention's article 8(2)⁸⁰ and the American Declaration's article XXVI(1),⁸¹ in *Pinheiro*. Pinheiro and Dos Santos had been preventively detained without judicial justification for 11 years and seven years, respectively, during which time both men were 'legally innocent'.⁸²

In finding a violation of the right to be presumed innocent, the Inter-American Commission cited the Inter-American Court of Human Rights for the proposition that depriving someone of his or her freedom for a disproportionate amount of time 'would be the same as serving a sentence in advance of the judgment'.⁸³ The Inter-American Commission stated that preventively detaining someone to sanction him or her before judgment had been reached amounted to criminal punishment and a violation of the right to be presumed innocent under the American Convention and the American Declaration.⁸⁴

The Inter-American Commission emphasised a similar interpretation of the presumption of innocence right under the American Convention's article 8(2) in *Jiménez*. Taking into account the facts of Jiménez's detention,⁸⁵ it held that 'universally accepted general principles of law

⁸⁰ According to art 8(2) of the American Convention, '[e]very person accused of a criminal offense has the right to be presumed innocent so long as his guilt has not been proven according to law'.

⁸¹ Art XXVI(1) of the American Declaration states that '[e]very accused person is presumed to be innocent until proved guilty'.

⁸² n 64 above, para 83.

⁸³ As above, para 85 (citing Inter-American Court of Human Rights, *Suárez Rosero* case, judgment of 12 November 1997, series C No 35, para 77).

⁸⁴ As above, para 86.

⁸⁵ nn 40–43 above and accompanying text.

prohibit anticipating the punishment before sentencing'.⁸⁶ Stressing the interrelatedness of anticipatory punishment and violation of the presumption of innocence, the Inter-American Commission found that Ecuador had violated Jiménez's right to be presumed innocent.⁸⁷ Stating this principle in *Giménez v Argentina*,⁸⁸ the Inter-American Commission noted that '[t]he guarantee of the presumption of innocence becomes increasingly empty and ultimately a mockery when pre-trial imprisonment is prolonged unreasonably'.⁸⁹

These decisions demonstrate how the violation of a single human rights provision, the right to a hearing on detention and trial within a reasonable time, can lead to the violation of a different human rights provision, the right to be presumed innocent. In so doing, these decisions illustrate the holistic nature of human rights. A human rights jurisprudence that appreciates the connections between and overlap of human rights provisions is better able to assist the complainant in her quest for justice.

4 Conclusion

Regarding the right to an impartial hearing on detention and trial within a reasonable time, the African Commission has found that trial by special tribunals dominated by the executive branch, as well as failure to act for a significant length of time, violate the right to be tried by an impartial court or tribunal within a reasonable time. The Inter-American Commission has adopted a case-by-case approach and reasonableness test to the issue of a hearing on detention and trial within a reasonable time. On the issue of the presumption of innocence, the African Commission in *Suleiman* found that negative state publicity may violate article 7(1)(b) of the African Charter, but left unanswered the question of the exact level of negative state publicity that triggers an infringement of the right to be presumed innocent and whether *any* negative state publicity suffices to find a violation. The Inter-American Commission has found that excessively long preventive detention or pre-trial imprisonment can violate the right to be presumed innocent.

⁸⁶ n 38 above, para 100 (reference to footnote omitted). The Inter-American Commission noted that '[i]gnoring these rules would run the risk, as in the instant case, of restricting for an unreasonable time the liberty of a person whose guilt has not been proven'.

⁸⁷ n 38 above, para 101.

⁸⁸ *Giménez v Argentina*, Inter-American Commission, Case 11.245 (1996).

⁸⁹ As above (as cited in JL Hafetz 'Pretrial detention, human rights and judicial reform in Latin America' (2003) 26 *Fordham International Law Journal* 1754 1760).

It should not come as a surprise that the work of the African Commission and the Inter-American Commission reflects, respectively, the human rights situations in Africa and the Americas.⁹⁰ Compared with the human rights situation in Europe, the human rights situation in the Americas, for example, differs significantly.⁹¹ The same holds true for the human rights situation in Africa. Nonetheless, despite the blatant nature of many human rights violations heard by the African Commission and the Inter-American Commission, the contribution of both Commissions to the development of international human rights law is to be welcomed.

⁹⁰ For a similar argument, see DS Sullivan, 'Effective international dispute settlement mechanisms and the necessary condition of liberal democracy' (1993) 81 *Georgetown Law Journal* 2369 n 139 (internal citation omitted).

⁹¹ As above (stating that '[t]he Inter-American Commission . . . has had to deal with problems of a quite different order: arbitrary arrests on a massive scale, systemic uses of torture, scores or hundreds of 'disappeared persons', total absence of judicial remedies, and other flagrant violations of civilized standards. In dealing with such cases it has found the governments concerned more like antagonists than willing partners').