

## THE INTER-AMERICAN HUMAN RIGHTS SYSTEM IN CRISIS

This panel was convened at 3:15 pm, Thursday, April 4, by its moderator, Ariel Dulitzky of the University of Texas School of Law, who introduced the panelists: Breno de Souza Diaz de Costa, Interim Representative of Brazil to the Organization of American States; Joel Antonio Hernández García, Permanent Representative of Mexico to the Organization of American States; Mónica Pinto of the University of Buenos Aires Law School; and José Miguel Vivanco of the Americas Division of Human Rights Watch.\*

### THE CRISIS OF THE INTER-AMERICAN SYSTEM

By Mónica Pinto<sup>†</sup>

It is said that the Inter-American Human Rights System (IASHR) is facing a crisis, that it needs reform. What kind of crisis is the system dealing with?

The crisis does not involve victims or rights. It does not deal with time limits, the role of NGOs, recruitments, or with the establishment of an academic community to study and construct a critical analysis of the decisions.

Instead, in the words of the Nicaraguan delegate, the crisis broke out because of certain aspects that states find problematic in the IASHR. That means that we are facing a crisis because certain features of the Commission's work bothers certain states.

The next question is: Why is there a crisis if the Commission maintains the same practices it always has? The answer is that the context has changed; that this America is not the one which faced authoritarianism in the 1970s and 1980s. Maybe this is true.

In the words of the Brazilian delegate, today we are living a different time. We identify new demands and new challenges; we live in a continent where economic, social, and cultural rights should be the first priority and where governments have taken action to reduce poverty. Therefore, it is necessary to update the IASHR.

In fact, states are suggesting a new balance of power. They stress their democratic origin; they are popular democracies. This populism entails, as a consequence, the rejection of any criticism of their human rights behavior—even more when it comes from a group of experts who have not been elected by the will of the people.

They use human rights language to blame the Commission for its independence and autonomy from member states; they are complaining because the system works against the indivisibility and the interdependence of human rights, allowing the massive violation of certain human rights by omission (e.g., because the Rapporteurship on Freedom of Expression is better financed than others).

Even when nobody says so, the OAS itself is under threat. During the last decade, new international instances have been established by the Inter-American states with a clear anti-U.S. profile. In Havana in 2004, Cuba and Venezuela gave birth to ALBA (Bolivarian Alliance for the Peoples of Our America), which was later joined by Bolivia, Nicaragua, Honduras, Ecuador, Saint Vincent & the Grenadines, and Antigua & Barbuda. In May 2008, UNASUR (the Union of South-American Nations) was established, and in February 2010, all OAS member states except the United States and Canada became members of CELAC (the Community of Latin-American and Caribbean States). None of these instances compute OAS patterns in their daily work; they all stress that they are free from American imperialism.

\* Mr. de Costa, Mr. García, and Mr. Vivanco did not contribute remarks to the *Proceedings*.

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The group consisting of Bolivia, Ecuador, Nicaragua, and Venezuela is in a peculiar position to exercise leverage against the traditional Western approach to human rights, which, according to them, the Commission expresses. They have a certain legitimacy because at least three of them have governments that allowed marginalized people access to education (perhaps only primary education, but it matches with one of the Millennium Development Goals); access to health care (perhaps only primary attention, but it is still an achievement); access to clean water; access to housing; rights to work under decent conditions, etc. At the same time, in those countries freedom of expression is under threat; journalism is a dangerous profession; independent judges are dismissed; and the opposition faces great obstacles to run in a transparent race with official political parties.

### THE REACTION

Aware of the criticism and acknowledging the facts, the Commission launched a consultation process and produced amendments to its Rules dealing with some technicalities that almost everybody welcomed: explicit criteria for precautionary measures and the inclusion of certain countries under the heading of Chapter IV of the Annual Report of the Commission (the chapter dealing with the situation of human rights in member states) and other technicalities which have become very sensitive for some states.

The system is not universal, and this is a problem. Only 25 out of the 35 OAS member states have ratified the American Convention, while only 22 of those 25 have accepted the Court's jurisdiction. It should also be mentioned that seven Caribbean countries—Antigua & Barbuda, Bahamas, Belize, Guyana, Saint Kitts & Nevis, Saint Lucia, and Saint Vincent & the Grenadines—have only ratified the Convention of Belem do Para on Violence against Women. This is a typical attitude of many countries that view the rights of women and children as soft, and, as a result, become bound by those treaties but never actually enforce them. Two other Caribbean countries—Dominica and Grenada—are state parties to the American Convention and to Belem do Para. The United States and Canada are outside any conventional link. Last but not least, Cuba has not made up its mind yet on the possibility of returning to the OAS; while Trinidad and Tobago denounced the Convention in 1998, and so did the Bolivarian Republic of Venezuela on September 6, 2012.

Calls have been made for all of them to become full members of the system by almost every delegation at the Special General Assembly. Silence has been their answer.

The traditional position of the English-speaking Caribbean states remaining on the outsides of the system should also be the object of debate. Some mechanism should be viewed for their empowerment in the system. They do not feel at home. The great majority of them remain in the margins of the system and do not take advantage of it. However, they use their number in a very political way in that they vote together and have at least fourteen votes out of 34 (not including Haiti, which is a CARICOM member state).

The lack of universality leads to the moving of the headquarters. The argument is perverse because it ignores the facts that the IACHR is one of the main organs of the OAS, the U.S. is a member state of the regional organization, and the Commission has the power to deal with communications against any member state. However, it is also possible to approach the issue from the point of view of the difference between those states which have ratified the American Convention and those which have not. It is a partial view. Problems with visas to the U.S. in order to attend the meeting provide little help to reasonable arguments.

I regret that financing is not a genuine concern of the community of Inter-American states. It is a problem only because the Rapporteurship on Freedom of Expression is very strict in

its analysis and is well-funded, mainly by U.S. and Western European donors. The group of four states blames mass media as the shelter of their political opposition. On the other hand, a positive view was advanced by countries such as Colombia, Argentina, Chile, Peru, and Panama.

It is true that there is strong disparity among rapporteurships. It is also true that the one dealing with Freedom of Expression was a creation of the heads of state and government during the second summit of the Americas with a view to stimulating awareness of the observance of this right in the light of its important role in the consolidation and advancement of the democratic system. They provided special funding for it and accepted the appointment of an external expert as head. All the others have been created by the Commission as a working mechanism, and are led by a Commissioner.

This could have been an excellent point for criticism and reform, but states missed it. Financing is only what stems from this criticism. They could have made a pledge to provide twice the funding they are providing as annual dues, but they did not!

The political decision to equalize the rapporteurships will, inevitably, reduce the amount of money available for the Rapporteurship on Freedom of Expression. A system of authorizations will inevitably be set up, and it will make room for criticism.

The dialogue has only started, and it should continue. Why? Because it was the price paid for a consensus resolution to be adopted. How will it impact the system? It depends a great deal on the political moods of the political leaders and governments. The group of four will not easily give up. They will insist on persuading and, of course, they are rich in oil and have shown themselves to be generous to their neighbors.

I want to close on a positive note about this Commission. Today, it has lost a lot of its political leverage on the grounds of a more technical profile, but it still stands as the human rights defender of men, women, and children on the continent.

The system has been able to strengthen human rights with few tools when authoritarian governments were the rule in the region, although it became stronger when democracies returned. The duty to prosecute for gross human rights violations to which the statute of limitations is not applicable, and to provide reparations to the victims; the prosecution of violence against women; the right to the truth; strict standards for freedom of expression, rights of the child, rights of indigenous populations, and limits to military jurisdiction are among the best products of this system.