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# To Strengthen Human Rights, Change the OAS (Not the Commission)

by *Santiago A. Canton\**

## INTRODUCTION

Once again, the 34 active Member States of the Organization of American States (OAS) have engaged in a process to reform the Inter-American System for Human Rights (IASHR, the System), particularly the Inter-American Commission on Human Rights (IACHR, the Commission). And, once again, the process is likely to end with minor, symbolic changes, mainly oriented toward pleasing the Member States. However, there are actual substantive changes needed to strengthen the System — reforms that the Commission and the Inter-American Court of Human Rights (IACtHR, the Court) have presented to the OAS for more than a decade, reforms requested by civil society and the victims of human rights violations who rely on the System as a last resort for justice, and reforms that will likely, once again, be ignored.

This article is divided into two parts. Part I evaluates the impact of the System on the Member States of the OAS. Any strengthening process must start with an evaluation of the results arising from the work of the Commission and Court as well as their impact on both Member States and individuals. Only after that exercise is done is it possible to determine the needs for a reform that effectively strengthens the System. Though the impact of the Commission and the Court can be seen on



*Juan Manuel Herrera/OAS*

a wide range of issues, this article specifically emphasizes the role they played in advancing democracy and strengthening the rule of law, as these two aspects are central in the current reform process. In addition, these two aspects are particularly important, considering that many States and the OAS Secretary General have maintained that the strengthening of democracy and the rule of law is not a mandate of the Commission and that any work in that regard should be limited to the States and the General Secretariat.

Part II takes a look at the reforms needed to strengthen the System.

I have not focused on the current debate to reform the Rules of Procedure of the Commission, as I believe that a more comprehensive approach is needed and that the strengthening of the IASHR goes through a different path than just another round of lip service to the Rules. Any comprehensive reform agenda must include a change of the OAS. A substantive reform of the OAS would not only significantly resolve most of the challenges of the System, but it would also help to redefine the role of an organization that, with the exception of its work on human rights, has become outdated in a fast changing region that is turning its back on this once relevant regional organization.

## PART I: IMPACT OF THE INTER-AMERICAN SYSTEM FOR HUMAN RIGHTS

### THE INTER-AMERICAN COMMISSION'S ROLE IN THE PROMOTION OF DEMOCRACY AND THE RULE OF LAW THROUGH VISITS AND REPORTS.

Any serious attempt to strengthen the System must first take into consideration the extraordinary results of the System, which is arguably the most efficient of all the international mechanisms for the protection of human rights.

Few would disagree that the work of the IACHR during the 1970s was critical in denouncing the massive human rights violations committed by brutal dictatorships and during the 1980s and 1990s was crucial in supporting the return of democracy. The Commission's work, including its country visits, requests for information, and reports on various human rights situations,

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helped reduce the number of violations and alerted the international community to grave human rights violations.

The Commission's 1979 country visit to Argentina was a pivotal point in the history of the System; its work helped strengthen and define the role of the Commission in preventing violations and advancing the rule of law in Latin America. As Jorge E. Taiana, a former Executive Secretary of the IACHR and Foreign Minister of Argentina, said, "[W]e were confident that the visit of the Commission would curb the abductions and weaken the genocidal dictatorship; that from then on, it would be less likely that prisoners would be dragged from their cells and shot[.]"<sup>1</sup>

Thirty years later, in June 2009, after the *coup d'état* in Honduras, the work of the Commission remained equally relevant.<sup>2</sup> Immediately after the *coup*, the Commission issued a press release condemning the *coup* and it conducted a country visit that allowed it to inform the international community of the human rights violations being carried out by the police and military. Promptly following the *coup*, the IACHR granted precautionary measures, which are emergency interim directives designed to protect victims. These precautionary measures called on the Honduran government to protect the life and personal integrity of more than 500 people, curbing the threat of further human rights violations in the country. The role of the Commission in denouncing human rights violations by military dictatorships is as relevant today as it was three decades ago.

From the 1979 report on Argentina to the most recent report on Honduras, the Commission's visits and country reports have offered much needed independent evaluations of the state of human rights in the countries of the region. In addition, the reports' findings have empowered civil society organizations throughout the region by providing them international support for the issues they champion.

## IMPACT OF THE INDIVIDUAL PETITION SYSTEM

In addition to the *political* role of the Commission in strengthening democracy and the rule of law through visits and reports for the past four decades, its role in advancing the same goals through the individual petition system is equally, if not more, important. Several decisions of the Commission have been instrumental in facilitating institutional changes in countries of the region, resulting in decisive steps toward the strengthening of democracy and the rule of law. Cases decided by the Commission regarding amnesty laws, women's participation in politics, military justice, and freedom of expression are only a few examples of how the work of the IASHR has transformed Latin America in ways unthinkable only fifteen years ago.

### *Amnesty Laws and Impunity for Grave Human Rights Violations*

I believe the most important decisions of the IASHR are three cases decided in the fall of 1992 against El Salvador, Argentina, and Uruguay.<sup>3</sup> With these three decisions, the Commission laid the groundwork for the most important legal contribution in the Americas toward strengthening democracy and fighting impunity in the region and the world: that amnesty laws are in violation of international human rights law. Since these

decisions, both the Commission and the Court have enriched the legal foundations of the initial decisions and helped to initiate a process that is resulting in the prosecution and sentencing of the individuals responsible for the destruction of the democratic system, together with the killings, torture, and disappearance of thousands of people.

### *Integration of Women into Governance*

Active and equal participation of women in politics is essential for the strengthening of democracy and the rule of law in countries across the region and the world. On December 28, 2000, the government of Argentina and the IACHR signed a landmark friendly settlement to ensure that women compose at least thirty percent of Argentina's Congress.<sup>4</sup> Although this percentage is not ideal, it was a remarkable step toward full equality and participation. The friendly settlement that reformed Argentina's electoral code also stipulated sanctions for non-compliance with the law.

### *Military Justice*

With a track record of serious human rights violations, many armed forces in Latin America have managed to enjoy impunity by guaranteeing that any prosecution against them be conducted under a military justice system, therefore ensuring a judgment by their peers and leniency resulting from the irregular legal procedure. In contrast, the Commission and Court have consistently held that military courts are not the appropriate procedure for prosecution of human rights violations.

Through a friendly settlement with the Commission in November 2007, Argentina repealed its military code and adopted a civilian court procedure for crimes committed by military officers.<sup>5</sup> In another groundbreaking decision, the Mexican National Supreme Court of Justice decided to restrict the competence of military tribunals in cases where army personnel are accused of human rights violations, based on the IACHR decision in the case of *Radilla-Pacheco v. Mexico*.<sup>6</sup>

### *Freedom of Expression*

For more than two decades, the protection of freedom of expression has been a pillar of the work of the Inter-American System. Both the Commission and the Court have used all the tools at their disposal to protect the right to freedom of expression: advisory opinions, individual petition decisions, friendly settlements, country visits, reports, and the creation of a Special Rapporteur on Freedom of Expression.

The Court's Advisory Opinion No. 5 laid the groundwork for the defense of freedom of expression as a key aspect of a democratic system, holding that freedom of expression is the cornerstone of a democratic society.<sup>7</sup> As a consequence of the System's decisions, the Chilean Congress reformed the country's Constitution and adopted a freedom of information law. For decades, the *desacato* laws have been used across the region to suppress the criticism of government authorities. However, in 1992 a friendly settlement included the repeal of the *desacato* law from Argentine legislation<sup>8</sup> and a report from the Commission established *desacato* laws as incompatible with

the American Convention on Human Rights.<sup>9</sup> As a consequence of that report and the Commission's follow-up, *desacato* laws were also repealed in Chile, Costa Rica, El Salvador, Guatemala, Honduras, Mexico, Panama, Paraguay, Peru, and Uruguay. In the cases of *Herrera-Ulloa v. Costa Rica*<sup>10</sup> and *Kimel v. Argentina*,<sup>11</sup> the Court decided that criminal prosecution for slander and libel, in cases of public interest, are also used to silence ideas and opinions. Because of the decision in the *Kimel* case, Argentina became the first country in the region to repeal libel and slander laws from the criminal code in cases of public interest.

## GUIDING JUSTICE ACROSS THE REGION

In recent decades, judges all over the region have incorporated the jurisprudence of the System in their domestic decisions. In so doing, an Inter-American *corpus iuris* is rapidly emerging and strengthening the rule of law with a human rights perspective. This article has given just a few of the multitude of examples of constitutional change, approval of new legislation, repeal of harmful laws, implementation of public policies, and denunciation of violations that have resulted from the work of the System.

In fact, it is possible to argue that the System has done more for strengthening democracy, the rule of law, and respect for human rights in the Americas than any other inter-governmental institution. Yet, if the Inter-American System has been so effective in protecting and defending human rights and strengthening democracy and the rule of law, why such a strong interest by some States in reforming the System? Unfortunately, the current reform process does not answer this question and is instead addressing the same procedural issues that have already been discussed in past reforms, and likely will result in changes to the Rules of Procedures and practices of the Commission and Court, all with the acceptance and approval by most Member States. In all the previous cases, however, while the Commission and Court proceeded with the reforms of the Rules, the States failed to make the changes that could have effectively strengthened the System, including universality, compliance, and a substantive budget increase. The reform process is walking the same path as before, and unless more substantive changes are included in the agenda, the Commission and Court will walk out of this process, unfortunately once again, without any new real strength to protect and defend human rights.

## PART II: CHANGES FOR A REAL STRENGTHENING OF THE SYSTEM

For at least the last twelve years, the Commission has annually presented OAS Member States with what it considers to be the main challenges of the System: universality, compliance, and budget increase. While the Commission's recommendations have always been given lip service, with the stated endorsement of most Member States, they have never translated into substantive changes. In addition to those three, I will mention other

changes that are not part of the discussion but are significantly more relevant — not only because they will strengthen the human rights system but also because they could help transition the OAS out of its current state of irrelevance for the region.

## TAKE CONCRETE STEPS TO ACHIEVE UNIVERSALITY

Both the Commission and the Court have insisted on the need to have a universal system. It is unacceptable that fifty years after the creation of the System many countries have not yet ratified all the human rights treaties. This is clearly a responsibility of the States, and there is very little that the Commission and Court can do in this respect.

If the States are serious about the importance of a universal system, they should take concrete steps. The OAS General Assembly, in addition to the Resolution passed every year calling for universality, should select a group of foreign ministers from countries that have ratified all the human rights instruments to travel to the other Member States and promote the

need for universal ratification. Furthermore, the OAS Secretary General, besides invoking the regular rhetoric of universality, should embark on a continuous effort with all Member States to ensure universal ratification. For the last few decades, universal ratification has never been a priority for the Secretary General.

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## INTEGRATE INTER-AMERICAN JURISPRUDENCE WITH INTERNAL LEGISLATION AND ESTABLISH A SPECIAL RAPporteur ON COMPLIANCE

Despite the important markers of success of the IASHR, States do not fully comply with a large majority of its decisions. The challenge of compliance is not unique to the IASHR. In the international human rights architecture, compliance with the decisions of the supervisory bodies is always one of the main challenges.

Considering that compliance is one of the principal *raisons d'être* of any human rights system, States should pass internal legislation to ensure compliance with the decisions of the Commission and Court. In the region, only three countries have such legislation (Peru, Costa Rica, and Colombia), though none of these States provides an ideal model to follow.

The OAS political bodies, in consultation with the Commission and Court, can help the countries of the region by providing the parameters for a model law of compliance that can facilitate the passing of national legislation.

In addition, the Commission should appoint a Special Rapporteur on Compliance. The Rapporteur should not only get information about the state of compliance but should also provide support and communicate between the States and the organs of the System to ensure full compliance with decisions. The Special Rapporteur should present its findings to a Special

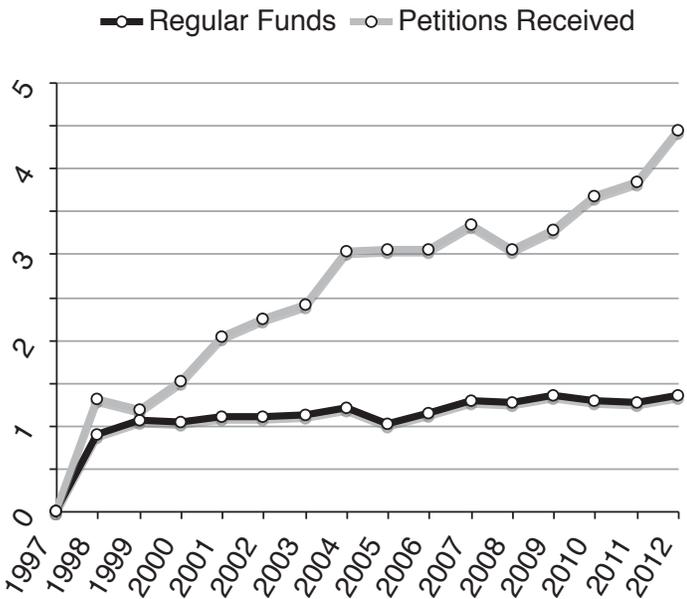
Meeting of the Permanent Council, which should be open to the active participation of victims and their representatives.

**COMPLY WITH THE OAS CHARTER BY PROVIDING THE SYSTEM WITH THE BUDGET REQUIRED TO ACCOMPLISH THE TASKS ASSIGNED TO IT**

With a budget of less than USD \$5 million, the Commission is significantly underfunded and unable to fully comply with all its mandates.<sup>12</sup> Although the lack of funding affects the Commission and Court, it is particularly evident in the individual petition system and the rapporteurships of the Commission.

In 2012, the Commission received approximately 2,000 complaints, an increase of 400% over fifteen years. Since 1997, the rate of petitions has increased exponentially and continues to increase between five and twenty percent every year. One of the main consequences of deficient funding is the delay in the processing of petitions. During these years, the other mandates of the Commission have also increased significantly, particularly due to the creation of new and more active rapporteurships. Out of the nine special procedures that exist today, only two existed prior to 1997, and their role was limited to mainly promotional activities. In spite of the increase of petitions and new mandates, during the same time the OAS’s regular budget for the Commission increased only marginally. A rough estimate indicates that if the Commission’s budget had increased in the same proportion as the rise in the number of petitions received and rapporteurships created, today the total budget for the Commission should be around USD \$15 million.

**GRAPH 1: GROWTH OF PETITIONS RECEIVED RELATIVE TO REGULAR FUNDS**



**CHART 1: GROWTH OF THE IACHR BUDGET AND PETITIONS**

Year	IACHR Budget	Petitions Received
1987	\$2,854,600	435
1998	\$2,569,140	571
1999	\$2,997,330	520
2000	\$2,968,784	658
2001	\$3,111,514	885
2002	\$3,140,060	979
2003	\$3,197,152	1050
2004	\$3,425,520	1319
2005	\$2,911,692	1330
2006	\$3,254,244	1325
2007	\$3,653,888	1456
2008	\$3,596,786	1323
2009	\$3,825,169	1431
2010	\$4,481,722	1598
2011	\$4,624,452	1670
2012	\$4,767,182	1935

In order to address this problem, the Commission initiated a campaign to get more funds from both the OAS and external sources. The efforts within the OAS resulted in very small increases. However, thanks to external funds, the Commission was able to double its regular budget. A significant percentage of the external funding came from European countries. The increase in funding was mainly allocated to the two areas with more need: the individual petition system and the rapporteurships.

As a consequence of securing outside funding, in the course of only three years the Commission was able to reduce the delay in the processing of cases in the initial review stage from an average of fifty months to an average of approximately 25 months. Regarding the rapporteurships, in addition to several more promotional activities, the Commission produced approximately 45 reports during that time, compared with only a couple during the years before. With this progress amidst only modest increases in funding, this fact cannot be underestimated: The vast majority of the challenges faced by the Commission could be resolved with an adequate budget.

The drafters of the Convention stated very clearly, without any possibility of misinterpretation, the importance of the budget for a well-functioning Commission in Article 40 of the American Convention by unequivocally expressing that the Secretariat “be provided with the resources required to accomplish the tasks assigned to it by the Commission.”<sup>13</sup> The Secretary General and Member States have failed to comply with the responsibilities under Article 40. If the budget is a more truthful reflection of the will of the States and the Secretary General, Chart 2 shows the gap between the rhetoric of Member States and the actual OAS objectives. The budget for 2012, including external funds, divided by allocation to the main areas, reveals this stark incongruence:

**CHART 2: 2012 PROGRAMMATIC AREAS RELATIVE PARTICIPATION BY FUND, IN THOUSANDS OF US DOLLARS**  
(SOURCE: OAS PROGRAM BUDGET OF THE ORGANIZATION)

Programmatic Area	Regular Budget	Specific & Voluntary Funds	Total
Democracy & Governance	7,194.5	18,017.5	25,212.0
Integral Development	17,396.1	20,782.7	38,178.8
Multidimensional Security	5,375.4	20,656.0	26,031.3
Policy Direction	6,631.6	1,852.5	8,484.1
Support for the Member States	17,146.2	1,893.3	19,039.5
Human Rights	6,940.7	3,600.4	10,541.1
Administration	12,467.2	4,745.2	17,212.4
Infrastructure & Common Cost	12,199.1	1,388.7	13,587.9
<b>TOTAL</b>	<b>85,350.8</b>	<b>72,936.4</b>	<b>158,287.1</b>

Over the years, the Commission has presented different options to the OAS for increasing the budget of the System. During the reform process in the late 1990s, the Commission requested a five-year gradual budget increase in order to reach a total of ten percent of the overall OAS budget. This proposal was accepted as part of the negotiations during the reform process; however, the Member States never followed through with the agreed upon budget increases.

In 2007, the Permanent Council approved a proposal presented by Colombia to create a Voluntary Trust Fund for the IASHR, the Oliver Jackman Voluntary Capital Fund.<sup>14</sup> The goal of the fund was to establish a source of money for voluntary contributions to finance the operations of the Court and Commission with income produced by capital contributions.<sup>15</sup>

The Fund was modeled after the Caribbean Court of Justice (CCJ), where in order to avoid governmental attempts to influence judgments “favorable to this or that” country, they created an independent Trust Fund of USD \$100 million.<sup>16</sup> This model was presented to the Secretary General in 2008 so he could engage in a conversation with the Inter-American Development Bank (IDB). However, as of December 2012, the Oliver Jackman Fund still has little more than the initial contribution from Colombia, totaling USD \$152,000.<sup>17</sup>

Ultimately, the solution to the Commission and Court budget challenges rests in a more profound change discussed at the OAS for at least two decades: the reform of the OAS itself. A profound change of the OAS structure would not only help to address the problems of the human rights system budget but more importantly would facilitate the design of a more efficient OAS with an emphasis on its most valuable areas of influence: democracy and human rights.

**OAS REFORM WITH A HUMAN RIGHTS AND DEMOCRATIC PERSPECTIVE**

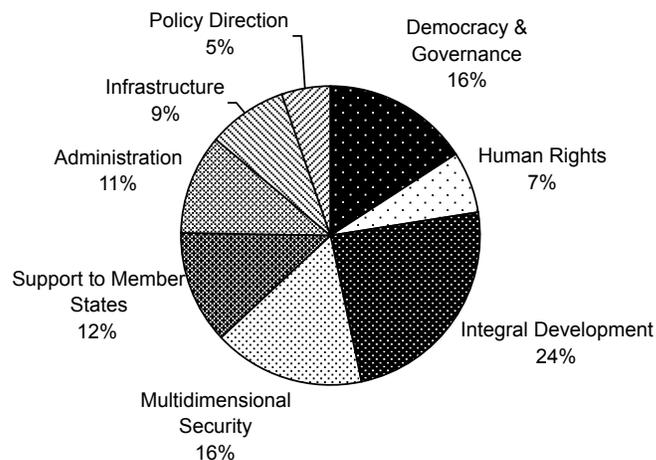
Latin American experts, diplomats, politicians, members of academia, and civil society from all over the Americas tend to

agree that the OAS is outdated and in desperate need of reform. In the current regional and global order, it is difficult to imagine how the OAS could have a leading role in the hemispheric architecture unless it undergoes significant change. Regrettably, in recent years it seems the Secretary General and some States sadly prefer oblivion to change. The risk of this option is that the fall of the OAS would also take down the few things that are working well, like the human rights system.

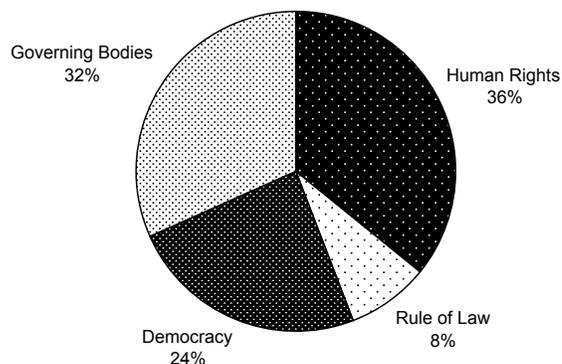
Most experts agree that the “Jewels of the Crown” within the OAS are the Commission and Court, apart from a few distinct projects like election observations. The remaining OAS activities not pertaining to democracy, human rights, and the rule of law can either be reduced, continued outside the OAS umbrella, transitioned into self-sustaining entities, or might not be necessary and can be eliminated altogether.

Any reform should strictly concentrate the OAS mandate to human rights, democracy, and the rule of law. In so doing, the reform needs to be clear that many of the mandates of the Commission, as mentioned in the first part of this article, are directly related to the strengthening of democracy and the rule of law. Therefore it follows that some activities that today fall under the Secretary General of the OAS could be streamlined and carried out more effectively by the Commission.

**GRAPH 2: 2012 PROGRAM-BUDGET BY PROGRAMMATIC AREAS, ALL FUNDS**



**GRAPH 3: 2012 COE PROGRAM BUDGET BY PROGRAMMATIC AREAS**



The first step in the OAS reform process should come with a budget that more clearly reflects the organization's priorities. The counterpart to the OAS in the European system is the Council of Europe (COE). The COE has 47 Member States for a total of 800 million people and priorities similar to those of the OAS — its primary aim is to ensure respect for its fundamental values: human rights, democracy, and the rule of law.<sup>18</sup> Similarly, the OAS's four main pillars are democracy, human rights, security, and development.<sup>19</sup>

With the exception of development, the goals of the two bodies are essentially the same. The OAS's pillar of multi-dimensional security is covered under the rule of law priority of the COE in programs related to organized crime, money laundering, terrorism, cybercrime, and trafficking in human beings. While the priorities are very similar, a look at the two budgets shows the gap between the rhetoric and the practice in both organizations. The COE allocates about 36% to human rights<sup>20</sup> and the OAS allocates seven percent.<sup>21</sup>

The mandates of the COE and the OAS do diverge with regard to the work on development. The OAS mandate on development is included in the OAS Charter and represents the largest percentage of the OAS budget in program-related activities. In 2012 development represented 24% of the OAS budget.<sup>22</sup> No significant change of the OAS budget, and therefore of the budgets of the Commission and Court, will occur without a serious discussion about development.

The OAS Member States should review the role of the OAS in development and let the Inter-American Development Bank (IDB), together with the Comisión Andina de Fomento (CAF) and the Caribbean Development Bank (CDB), take the lead on development in the region.

Article 1 of the OAS agreement establishing the IDB states in its first line that “[t]he purpose of the Bank shall be to contribute to the acceleration of the process of economic development of the member countries, individually and collectively.”<sup>23</sup> One obstacle to fully incorporating all of the OAS development activity within the IDB is the fact that not all Caribbean Member States of the OAS are members of the IDB. This potential obstacle to strictly limiting the mandate of the OAS to human rights and democracy should be addressed by both institutions in order to guarantee full access of all Caribbean states to the benefits of the IDB.

The CAF today includes sixteen countries from Latin America and the Caribbean<sup>24</sup> and its goal is to “promote sustainable development and regional integration through efficient resource mobilization for the timely delivery of multiple, high added value financial services to public and private clients in our shareholder countries.”<sup>25</sup>

The CDB includes eighteen countries from the Caribbean<sup>26</sup> and operates under the goal of being the leading catalyst for development efforts within the region by working with CDB members and other development partners toward the systematic reduction of poverty in their countries through social and economic development.

With an annual budget of approximately USD \$38 million, the OAS's impact in development, in comparison with over USD \$10 billion in development funds among the three main regional institutions, is clearly insignificant.

The work of the IDB, together with the CAF and the CDB, makes it unnecessary for the OAS to continue its work on development, particularly at the expense of democracy and human rights. Although there are differences in development work among these institutions, in the context of a new OAS, the current programs that are unique to the OAS could be incorporated into the other institutions.

The streamlining of the OAS by narrowing its mandates to human rights, democracy and the rule of law should represent a correlating significant increase to the budgets of the Commission and Court.

## CREATION OF NEW STRUCTURES

The restructuring of the OAS should also advance the creation of new structures that could address some of the issues that today's OAS ignores but are necessary for an OAS more receptive to the region's new challenges.

### *Establish a Venice Commission for the Americas*

One criticism from Member States is that the Commission does not entirely fulfill its advisory role in relation to governments. From a strictly formal analysis, this criticism is baseless. Over the last thirteen years, only Colombia has requested advice under Article 41(e) of the American Convention. And in that case, the Commission responded immediately. The Commission also responded in a few other instances when a request was formally presented, although not through the provision of Article 41(e), as was the case with the request of Peru in the situation regarding the appropriate tribunal for the trial of *Montesinos* and the right to due process.

The Commission is far from being able to respond to all requests by Member States for advice and support on issues such as legislative reforms, public policies, and electoral disputes. Budget constraints, as well as the possibility of a conflict of interest should its advice ever come into play in an individual petition brought before the Commission, seriously limit the ability of the Commission to respond in many of the cases.

The European Commission for Democracy through Law, better known as the Venice Commission, is an excellent model to consider in the Americas.<sup>27</sup> It is an advisory body on constitutional matters composed of independent experts. The OAS should establish such an independent body composed of independent experts who could respond to the requests the Commission receives. There should be formal channels of communication between the new advisory body and the IACHR in order to ensure the incorporation of a human rights perspective in any advice given by such a body.

### *Permanent Commissioners and Judges*

It is no longer possible to continue with the model designed in 1959 of temporary members *ad honorem* serving as Commissioners and Judges. With the ever-increasing number of petitions, it is necessary to have a Commission and Court staffed with permanent, professional members. Although some positive steps have been taken in this direction, the technically part-time Commissioners and Judges continue to receive inadequate

honorariums and spend an inordinate amount of time working for the Commission and Court.

### *Additional Special Rapporteurships Following the Freedom of Expression Model*

The rapporteurships of the Commission<sup>28</sup> play an integral role in highlighting issues that deserve special attention by the international community. Originally, the work of the rapporteurships was mainly promotional and until 1998 all rapporteurships were carried out by a Commissioner. In 1998 the Commission created the Special Rapporteurship for Freedom of Expression as a permanent office with one person selected by the Commission working full-time and with a mandate expanded beyond just promotional activities. In addition, in 2001 the Executive Secretary created the Unit of Human Rights Defenders, which since 2008 has been led by a Commissioner and in 2012 became a rapporteurship. Also in 2011, the Commission created the Unit on the Rights of Lesbian, Gay, Trans, Bisexual, and Intersex Persons (LGTBI), which is also led by a Commissioner.

Today, as a consequence of these developments, the Commission has seven rapporteurships, one special rapporteur, and one unit. Commissioners fulfill all roles except that of the Rapporteur for Freedom of Expression. Based on the evolution of the System and the experience of the UN special procedure system, it is very likely the Commission will create additional rapporteurships. It goes against any rationale to limit the amount of rapporteurships to the amount of Commissioners, as if there will never be more than seven important issues.

With the increasing number of petitions and country visits, it will become very difficult for the Commissioners to be able to dedicate the time needed to ensure that the mandates of the rapporteurships and units receive the special attention and expertise required, even if they are employed full-time.

The Commissioners are selected for their “recognized competence in the field of human rights”<sup>29</sup> and not necessarily for their special expertise on any particular human rights issue. The work of the rapporteurships has also expanded from the original promotional activities to a more active mandate; in many cases, the knowledge and experience of the Commissioners might not be sufficient to carry out the expanded responsibilities.

A stronger IASHR should contemplate more special rapporteurships following the model of the Rapporteur for Freedom of Expression, which is the best way to guarantee that these special mandates will benefit from an expert in the field and that the issue will get the requisite attention.

### *Freedom of Expression for all Sectors*

The OAS is very outdated when it comes to welcoming the voices of the political opposition to governments. The voices

of the opposition are strongly silenced by Member States. Few things will strengthen the democratic systems and the respect for human rights throughout the Americas more than the possibility for opposition leaders to, at the very least, be provided an opportunity to express their views within the OAS. The history of Latin America would be dramatically different today if throughout the 1970s opposition leaders had the opportunity to express their views on the atrocities taking place at that time. Countless deaths may have been prevented.

The argument that today because all Member States are democracies there is consequently no need for the opposition to express its views is one that does not even pass an elementary test on democracy and freedom of expression. The European System benefits from the European Parliament, which allows for a range of voices from Member States to express their views. If the OAS wants to be a beacon of democracy and human rights in the Americas, it must reform itself to allow other voices to participate in the political debate.

In addition, the OAS should have a systematic approach to allow civil society to participate in the discussions. Although civil society enjoys more opportunities than opposition leaders, non-governmental organizations’ participation is still subject to a case-by-case determination without a clear and transparent procedure for regular participation.

### *General Assembly*

The regular General Assembly of the OAS has lost its significance. Only Extraordinary Assemblies have, on occasion, some relevance, such as when they are called to address an

issue that affects democracy and human rights. Most of the work during the regular General Assembly session is either completely unnecessary or could easily be handled by the Permanent Council.

However, if the OAS can modify its mandates to concentrate primarily on human rights and democracy, the General Assembly could become relevant once again by spending the time and energy to discuss the work of the OAS in these two fields. Today, the combined time given to the Commission and the Court during the General Assemblies is no more than fifteen minutes. Most of the time, there is absolutely no discussion of the activities carried out during the year by these two bodies. In the last fifteen years, the only discussions about the System took place in El Salvador in 2011 and Bolivia in 2012, and those instances were both to discuss the reform process, not necessarily to discuss strengthening the System.

A more effective regional system for the protection of human rights should include a General Assembly that meets every year to discuss the reports of the Commission and Court. After the presentations of the Presidents of the two bodies, the Special Rapporteur on Compliance should inform the Member States of the status of compliance and provide recommendations for follow up.

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**The first step in the OAS reform process should come with a budget that more clearly reflects the organization’s priorities. If the OAS wants to be a beacon of democracy and human rights in the Americas, it must reform itself to allow other voices to participate in the political debate.**

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## CONCLUSION

For at least the last fifteen years, the Commission and Court have regularly expressed to the Member States of the OAS the need to strengthen the System through significant increases in the budget, the ratification by all States of the human rights treaties, and increased compliance with the decisions of the Commission and Court. These requests have consistently been ignored by most States and the General Secretariat, in spite of the constant expressions of support by presidents, foreign ministries, ambassadors, secretaries general, and civil society organizations.

All the recent attempts initiated by Member States to strengthen the System have, on the contrary, been characterized by requests for reforms oriented toward changes that will mainly limit the Commission's ability to defend and protect millions of people in the Americas from human rights violations committed by the States.

The extraordinary achievements of the Commission and Court in defending and protecting human rights and the rule of law in the Americas have increased the demands from individuals and civil society organizations throughout the Americas for an even more active System. The Commission and Court are not able to respond in full to the new demands, mainly because the OAS General Secretariat and some Member States have not followed up with the promises made to increase the budget of the Commission and Court.

A serious strengthening of the System should take into consideration the new hemispheric reality of an OAS that is no longer the relevant political forum of decades ago. The strengthening of the System should therefore start by acknowledging this reality and by reforming the OAS to focus its work on democracy and human rights. A reform based on that ground will not only strengthen the human rights protection for millions of people all over the Americas, but it will also result in a reinvigorated OAS.

## Endnotes

<sup>1</sup> INTER-AMERICAN COMMISSION ON HUMAN RIGHTS STRATEGIC PLAN 2011-2015, pg. 45 available at <http://www.oas.org/en/iachr/docs/pdf/IACHRStrategicPlan20112015.pdf>

<sup>2</sup> Honduras: Human Rights and the *Coup d'État*, Inter-Am. Comm'n H.R., OEA/Ser.L/V/II, doc. 55 (2009), available at <http://www.cidh.org/pdf/%20files/HONDURAS2009ENG.pdf>. All references to this situation in Honduras are culled from this report.

<sup>3</sup> IACHR, Report 26/92, Case 10,287, Las Hojas Massacre, El Salvador, September 24, 1992; IACHR, Report 28/92, Cases 10.147, 10.181, 10.240, 10.262, 10.309 and 10.311, Argentina, October 2, 1992; and IACHR, Report 29/92, Cases 10.029, 10.036, 10.145, 10.305, 10.372, 10.373 and 10.375, Uruguay, October 2, 1992.

<sup>4</sup> See María Merciadri de Morini, Case 11.397, Inter-Am. Comm'n H.R., Report No. 103/01, OEA/Ser.L/V/II.114, doc. 5 ¶ 8 (2001).

<sup>5</sup> Press Release, Inter-Am. Comm'n H.R., IACHR Praises Repeal Of Argentina's Military Justice Code, IACHR Press Release No. 36/08 (Aug. 12, 2008).

<sup>6</sup> Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 209 (Nov. 23, 2009).

<sup>7</sup> Compulsory Membership in an Association Prescribed By Law For The Practice Of Journalism (Arts. 13 and 29 American Convention on Human Rights), Advisory Opinion OC-5/85, Inter-Am. Ct. H.R. (ser. A) No. 5 (Nov. 13, 1985).

<sup>8</sup> Horacio Verbitsky v. Argentina, Case 12.128, Inter-Am. Comm'n H.R., Report No. 3/04, OEA/Ser.L/V/II.122, doc. 5 rev. 1 at 106, note 9 (2004).

<sup>9</sup> Report on the Compatibility of "Desacato" Laws with the American Convention on Human Rights, Inter-Am. Comm'n H.R., OEA/Ser. L/V/II.88, doc. 9 rev., 212 (1995).

<sup>10</sup> Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 107 (July 2, 2004).

<sup>11</sup> Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 177 (May 2, 2008).

<sup>12</sup> ORGANIZATION OF AMERICAN STATES, PROGRAM BUDGET OF THE ORGANIZATION APPROVED BY THE GENERAL ASSEMBLY 2012 16 (2011) (*hereinafter* "PROGRAM BUDGET").

<sup>13</sup> Organization of American States, American Convention on Human Rights, Nov. 22, 1969, O.A.S.T.S. No. 36, 1144 U.N.T.S. 123 [*hereinafter* American Convention].

<sup>14</sup> Organization of American States, *Regulations for the Operations of the Oliver Jackman Voluntary Capital Fund to Finance the Inter-American Human Rights System*, Permanent Council Res. 924, OEA/Ser.G-CP/RES. 924 (1623/07) (Dec. 11, 2007).

<sup>15</sup> *Id.*

<sup>16</sup> Revised Agreement Establishing the Caribbean Court of Justice Trust Fund, Preamble, Jan. 12, 2004, available at [http://www.caricom.org/jsp/secretariat/legal\\_instruments/ccj\\_revisedtrustfund.jsp](http://www.caricom.org/jsp/secretariat/legal_instruments/ccj_revisedtrustfund.jsp).

<sup>17</sup> Press Release, *OAS Secretary General Proposes Creation of One Hundred Million Dollar Capital Fund to Support the Inter-American Commission and Court of Human Rights*, IACHR Press Release No. E-452/12 (Dec. 6, 2012), available at [http://www.oas.org/en/media\\_center/press\\_release.aspx?sCodigo=E-452/12](http://www.oas.org/en/media_center/press_release.aspx?sCodigo=E-452/12).

<sup>18</sup> *Our Objectives*, COUNCIL OF EUR. (2012), <http://www.coe.int/aboutcoe/index.asp?page=nosObjectifs>.

<sup>19</sup> *Who We Are*, ORG. OF AM. STS. (2013), [http://www.oas.org/en/about/who\\_we\\_are.asp](http://www.oas.org/en/about/who_we_are.asp).

<sup>20</sup> COUNCIL OF EUROPE, PROGRAMME AND BUDGET 2012–13 Table 1.

<sup>21</sup> PROGRAM BUDGET, *supra* note 12, at 33.

<sup>22</sup> *Id.*

<sup>23</sup> Agreement Establishing the Inter-American Development Bank, April 8, 1959, O.A.S.T.S. No. 14, 389 U.N.T.S. 5593.

<sup>24</sup> For a list of Member States, see *Shareholder Countries*, CAF DEV. BANK OF S. AM., <http://www.caf.com/view/index.asp?pageMS=62008&ms=19> (last visited Feb. 5, 2013).

<sup>25</sup> *What is CAF and What is Its Mission?*, CAF DEV. BANK OF S. AM., <http://www.caf.com/view/index.asp?ms=19&pageMs=61928> (last visited Feb. 5, 2013).

<sup>26</sup> For a list of Member States, see *Member Countries*, CARIBBEAN DEV. BANK (2013), <http://www.caribank.org/about-cdb/member-countries>.

<sup>27</sup> See generally Revised Statute of the European Commission for Democracy Through Law, Council of Eur. Comm. of Ministers Res. (2002) 3 (Feb. 21, 2002), available at <http://conventions.coe.int/Treaty/EN/partialagr/html/venise2002-3.htm>.

<sup>28</sup> See generally *Thematic Rapporteurships and Units*, INTER-AM. COMM'N ON HUM. RTS., <http://www.oas.org/en/iachr/mandate/rapporteurships.asp> (last visited Feb. 5, 2013) (providing information on each rapporteurship and unit within the Commission).

<sup>29</sup> American Convention, *supra* note 13, at art. 34.