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The Legacy and Current Challenges of the Inter-American Commission on Human Rights

*Remarks of Jorge E. Taiana**

The establishment of inter-governmental human rights bodies during the second half of the twentieth century was initially based upon the need to provide protection from the impact of armed conflict, authoritarian regimes, and abuse of power. Later, the human rights movement contributed to the amplification of this protection towards the enjoyment of economic, social, and cultural rights.

The Inter-American Commission on Human Rights (Commission) of the Organization of American States (OAS) has had a central role in the development of the international law of human rights in these areas, and its work and influence is very much linked to the recent history of our region. In order to better understand the way forward when facing the Commission's current challenges, it is worth considering the three phases that have defined its work throughout the last five decades, as well as its outstanding contribution to the protection of human rights through its recommendations to OAS Member States.

THE PHASES DEFINING THE DEVELOPMENT OF REGIONAL HUMAN RIGHTS PROTECTION

After its creation by a simple resolution in 1959, the Commission's first decade of work was an exercise in institutional consolidation through practice and progressively defining mandates in the area of *in loco* observations and individual petitions study in a context where the situations in the Dominican Republic and Cuba were high on the agenda of influential Member States. This institution-building phase concluded with the adoption of the text of the American Convention on Human Rights (American Convention) in 1969 and the entry into force in 1970 of the amendment to the OAS Charter introduced by the 1967 Protocol of Buenos Aires. The former enshrined the double

political and quasi-judicial mandate of the Commission, and the latter elevated it to the status of principal organ of the OAS.

In our region, transitions to democracy appear to be completed and functioning in terms of the holding of periodic elections, but it is clear that many States are still facing the legacy of decades of institutional shortcomings and weaknesses.

In a second phase, during the 1970s and 1980s, the Commission showed determination and independence — beyond that of the rest of the main organs of the OAS — when conducting *in loco* observations and issuing country and individual case reports, which exposed serious human rights violations perpetrated by dictatorial regimes. The expansion and consolidation of the international protection of human rights in our region was firmly rooted in this period and in the trust inspired by the Commission's role and independence. The Commission accompanied the emergence of groups of victims and their families and civil society organizations seeking international protection whenever their claims failed to be heard at the domestic level.

In a third phase — coinciding with the global tendency toward liberal economic policies ushered in after the fall of the Berlin Wall in the 1990s — the Commission accompanied the transition to democracy in several countries of the region. During this period, together with the Inter-American Court (Court), the Commission played an important role in the development of the international law of human rights in the areas of the right to truth, justice, and reparations for the victims of serious human rights violations. Through its recommendations, reports, and judgments, the Commission also provided guidance for the adoption of legislation and public policies in these areas.

More specifically, during this period the Commission and the Court assisted Member States and civil society in dealing with past human rights violations, playing a role in the prosecution before ordinary courts of those responsible and keeping Latin America at the forefront of accountability. It also contributed to the strengthening of democracy and the rule of law in the region through the development of standards that in many instances were incorporated into domestic law and policy by way of statutes or internal judicial decisions.

The first decade of the new millennium brought a new phase and new challenges for the Inter-American Human Rights System (System). The international scene has been negatively impacted by the 9/11 attacks and the so-called war on terror, as well as the growing concerns over the negative social effect of Globalization. The disappointing results of the 2001 Durban

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World Conference already showed this tendency. The momentum in the development of tools for the regional and universal protection of human rights, garnered during the 1990s, seemed to have faded.

In our region, transitions to democracy appear to be completed and functioning in terms of the holding of periodic elections, but it is clear that many States are still facing the legacy of decades of institutional shortcomings and weaknesses. And yet, many of these democratic governments have put forward an agenda for change with an emphasis on issues relating to development of social concerns.

More recently they have questioned the role of the System in the current regional context as well as some of the underpinnings of human rights protection such as international supervision through the study of individual complaints, precautionary measures, and reporting in terms of Chapter IV of the Commission's Annual Report. In view of this, it is necessary to review some of the contributions made by the organs of the System which have provided useful standards and tools for state policy in the region.

OUTSTANDING CONTRIBUTIONS

TRUTH, JUSTICE, AND REPARATIONS FOR SERIOUS HUMAN RIGHTS VIOLATIONS

As mentioned, the Commission and Court have had a crucial role in the development of standards relating to the investigation and prosecution of serious and systematic human rights violations perpetrated by state agents, in light of the principles of truth, justice, and reparations. Some of their landmark decisions and reports will be mentioned below.

In 1979, the IACHR visited Argentina. In 1980, it adopted a country report highlighting forced disappearances and the perpetration of crimes against humanity. The visit and the report gave impetus to the activities of local NGOs and exposed the perpetration of serious human rights violations by state agents.

In 1988, the Court issued the first in a series of three judgments on the forced disappearance of civilians in Honduras. These judgments are considered to be fundamental contributions to the development of international human rights law.

In *Report 28/92*,¹ the Commission found that the so-called *Obediencia Debida* and *Punto Final* statutes enacted in Argentina were incompatible with the American Convention. This decision, together with the judgment of the Court in the *Barrios Altos v. Peru* case,² provided the basis for the 2005 Argentine Supreme Court judgment declaring these statutes unconstitutional, thus allowing the prosecution of individuals responsible for the commission of crimes against humanity during the military dictatorship from 1976 until 1983.

In its 1998 *in loco* visit to, and its 2000 report on, Peru,³ the Commission highlighted the human rights violations perpetrated by Alberto Fujimori's administration, the incompatibility of the amnesty law with the American Convention, and the obligation to prosecute those responsible for the crimes committed. In 2009, the Peruvian judicial system sentenced Fujimori to 25 years' imprisonment for the killings perpetrated in *La Cantuta*⁴ and *Barrios Altos*.

The Commission and the Court issued a number of reports and judgments on the massive and systematic violations perpetrated in Guatemala during the 1980s and 1990s, such as *Paniagua Morales, et al.*⁵ and *Plan de Sánchez*,⁶ among others. The Commission issued reports on State responsibility in the extrajudicial executions of *Monseñor Romero* and the *Jesuit Priests*⁷ in El Salvador.

The Commission and the Court have established the international responsibility of Colombia for the creation of paramilitary groups and their involvement in serious human rights violations in the massacres known as *19 Comerciantes*, *La Rochela*, *Ituango*, and *Pueblo Bello*,⁸ among others.

In its 2006 *Almonacid Arellano, et al.* judgment,⁹ the Court found the Chilean self-amnesty law to be incompatible with the American Convention. In 2011, in its judgment in the *Gelman* case,¹⁰ the Court found that Uruguay's *Ley de Caducidad de la Pretensión Punitiva del Estado* (which had prevented the prosecution of those responsible for the commission of human rights violations during the dictatorship) was incompatible with the American Convention. In March 2012, President Mujica publicly acknowledged responsibility on behalf of the state.

STRENGTHENING OF THE RULE OF LAW, GENDER EQUALITY, AND INDIGENOUS RIGHTS

The Commission and the Court have had a crucial role in setting standards for the full enjoyment of human rights and the strengthening of democracy in the region. The decisions and recommendations of the organs of the System are reflected in substantial contributions to the development of legislation and good practices in a large number of OAS Member States as well as in the reparations for the consequences of human rights violations.

In many cases, the courts of several countries of the region have incorporated these standards in their own decisions. The Commission and the Court have also established channels for constructive dialogue with national and local governmental entities, a strategy that has been emulated by other regional and universal organs. Some of their landmark decisions and reports will be mentioned below.

In the *Maria da Penha* Report,¹¹ the Commission established that there was a pattern of domestic violence against women in Fortaleza, Brazil, along with a lack of judicial response and preventive measures. As a result, President Ignacio Lula da Silva partook of the symbolic reparations for the victim herself, and measures were taken to adopt legislation relating to the administration of justice and the training of security forces involved in cases of domestic violence.

In compliance with the friendly settlement in the *Maria Eugenia Morales de Sierra* case,¹² Guatemala modified its civil code in order to acknowledge equality of rights in marriage for men and women. In compliance with the friendly settlement in the *M.Z.* case,¹³ Bolivia introduced training for judicial branch officials on gender discrimination and violence against women.

In February 2012, the Court issued its judgment in the *Atala* case¹⁴ in which it established that the American Convention prohibits any rule, action, or practice tantamount to discrimination based on sexual orientation.

In compliance with the judgment in the *Awás Tingni* case¹⁵ relating to indigenous peoples' rights to ancestral land, the Court awarded the community title deeds to 73,000 hectares. In compliance with a friendly settlement agreement, the *Lamenxay and Riachito* communities of the Enxet-Sanapaná peoples were awarded the title deeds to 21,800 hectares in Paraguay.¹⁶ In April 2012, Ecuador acknowledged international responsibility for violation of the Sarayaku indigenous peoples' rights in a case before the Court.¹⁷ The Commission has issued a thematic report titled *Indigenous and Tribal People's Rights over their Ancestral Lands and Natural Resources (2009)*.¹⁸

HUMAN RIGHTS PROTECTION IN OAS MEMBER STATES THAT HAVE NOT YET RATIFIED THE AMERICAN CONVENTION

The Commission has worked intensely regarding human rights issues in OAS Member States that have not yet ratified the American Convention, including several Commonwealth Caribbean States, Canada, and the United States. These issues are addressed in thematic and country reports, advisory opinions, precautionary measures, and reports on individual cases.

Some of its landmark decisions and reports include the *Report on the Situation of Human Rights of Asylum Seekers within the Canadian Refugee Determination System (2000)*,¹⁹ reports on individual cases on the incompatibility of the mandatory application of the death penalty in several states of the Commonwealth Caribbean with the American Declaration on the Rights and Duties of Man (American Declaration), and the report on *The Death Penalty in the Inter-American Human Rights System: From Restriction to Abolition (2011)*.²⁰

The Commission is the only body — both at the regional and the universal level — with competency to examine claims and precautionary measure requests regarding the United States. Its series of decisions, precautionary measures, and thematic reports involving the United States are noteworthy and address the main human rights issues such as terrorism and human rights, and immigration. The latter, in fact, often involves the interests of nationals of other OAS Member States.

Some of its landmark decisions and reports include the precautionary measures granted in 2002 to safeguard the physical integrity and right to due process of detainees held at Guantanamo Bay and periodic follow-up through public hearings, resolutions, and press releases; the *Report on Terrorism and Human Rights (2002)*;²¹ Report No. 51/00 *Rafael Ferrer-Mazorra et al.*²² on the indefinite detention of Cuban "Marielitos;" *Report on Immigration in the United States: Detention and Due Process (2011)*;²³ Report No. 90/09 on cases *Medellín, Ramírez Cárdenas, and Leal García*²⁴ on the prosecution of foreign nationals, both without consular assistance and the application of the death penalty; Report No. 63/08 *Andrea*

*Mortlock*²⁵ on the deportation of foreign nationals with HIV; Report No. 81/10 *Wayne Smith, Hugo Armendariz et al.*²⁶ on the compatibility of deportation proceedings with the American Declaration.

In any case, the universal ratification of the American Convention and the acceptance of the Court's contentious jurisdiction by all OAS Member States remains a main objective within the System.

THE CHALLENGES AHEAD

In the last few years, the democratic governments of Latin America, through pursued public policies, have articulated a different understanding of the System's role in order to overcome structural inequalities in their societies. At the same time, it is undeniable that the standards and mechanisms of protection developed by the Commission and the Court for the protection of groups of individuals afflicted by historical and structural discrimination have proved to be relevant when dealing with the consequences of these inequalities and the setting of mechanisms for their prevention, and are now part of the legal fabric of many states of the region.

In any case, the situation has led the OAS Member States to question the exercise of the Commission's mandate through a process that set the basis for discussion in the 2012 General Assembly held in Bolivia, and that will continue in a forthcoming Special General Assembly in 2013. In this context, the Commission must develop clear and inclusive actions to face these challenges and to reinforce its dialogue with the governments of all OAS Member States, especially with those which have been emphatic in their concerns.

Today the governments of the Americas have the responsibility to preserve and strengthen the mechanisms for protection of fundamental rights available to the individuals under their jurisdictions, including their own and the System's administration of justice. All stakeholders, especially the Commission, must strengthen our regional system as a tool to protect human rights in the current context. This task can only be undertaken and completed through constructive dialogue with the democratic states of the region.

The cardinal national policies nurtured by standards set not long ago by the Commission and the Court attest to the potential of the System to continue accompanying the advancement in the enjoyment of human rights in the Americas with the participation of all stakeholders. A strong system for the protection of human rights — following the inspiring example of the Commission during the darkest eras of our recent history — is clearly an invaluable and essential asset for the present and the future of our region.

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Endnotes

- ¹ *Conseulo v. Argentina*, Case 10.147, 10.181, 10.240, 10.309, 10.311, Inter-Am. Comm'n H.R., Report No. 28/92, OEA/Ser.L/V/II.83, doc. 14 rev. at 41 (1993).
- ² *Barrios Altos v. Peru*, Merits, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 75 (Mar. 14, 2001).
- ³ Second Report on the Situation of Human Rights in Peru, Inter-Am. Comm'n H.R., OEA/Ser.L/V/II.,106, doc 59 rev. (2000).
- ⁴ *La Cantuta v. Peru*, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 162 (Nov. 29, 2006).
- ⁵ *Paniagua Morales v. Guatemala*, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 37 (Mar. 8, 1998).
- ⁶ *Plan de Sánchez Massacre v. Guatemala*, Merits, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 116 (Nov. 19, 2004).
- ⁷ *Ignacio Ellacuria v. El Salvador*, Case 10.147, 10.488, Inter-Am. Comm'n H.R., Report No. 136/99, OEA/Ser.L/V/II.106, doc. 3 at 41 (1999).
- ⁸ *Case of 19 Merchants v. Colombia*, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 109 (July 5, 2004); *Mariela Morales Caro v. Colombia*, Case 11.995, Inter-Am. Comm'n H.R., Report No 42/02, doc. 5 re. 1 at 239 (2002); *La Granja, Ituango v. Colombia*, Case 12.050, Inter-Am Comm'n H.R., Report No 57/00, OEA/Ser.L/V/II.111, doc. 20 rev. at 198 (2000); *Case of the Pueblo Bello Massacre v. Colombia*, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 140 (Jan. 31, 2006).
- ⁹ *Almonacid Arellano v. Chile*, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 154 (Sept. 26, 2006).
- ¹⁰ *Gelman v. Uruguay*, Merits and Reparations, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 221 (Feb. 24, 2011).
- ¹¹ *Maria da Penha v. Brazil*, Case 12.051, Inter-Am. Comm'n H.R., Report No. 54/01, OEA/Ser.L/V/II.111, doc. 20 rev. at 704 (2000).
- ¹² *María Eugenia Morales de Sierra v. Guatemala*, Case 11.625, Inter-Am. Comm'n H.R., Report No. 28/98, OEA/Ser.L/V/II.95, doc. 7 rev. at 144 (1997).
- ¹³ *M.Z. v. Bolivia*, Case 12.350, Inter-Am. Comm'n H.R., Report No. 73/01, OEA/Ser.L/V/II.114, doc. 5 rev. at 121 (2001).
- ¹⁴ *Atala Riffo and Daughters v. Chile*, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 239 (Feb. 24, 2012).
- ¹⁵ *Mayagna (Sumo) Awas Tingni Community v. Nicaragua*, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 79 (Aug. 31, 2001).
- ¹⁶ *Enxet-Lamexay and Kayleyphapopyet (Riachito) Indigenous Communities v. Paraguay*, Case 11.713, Inter-Am. Comm'n H.R., Report No. 90/99 (Sept. 29, 1999), *available at* <http://www.cidh.oas.org/annualrep/99eng/Friendly/Paraguay11.713.htm>.
- ¹⁷ *Kichwa Indigenous People of Sarayaku v. Ecuador*, Merits and Reparations, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 245 (June 27, 2012).
- ¹⁸ *Indigenous and Tribal Peoples' Rights Over Their Ancestral Lands and Natural Resources*, Inter-Am. Comm'n H.R., OEA/Ser.L/V/II., doc. 56/09 (2009).
- ¹⁹ *Report on the Situation of Human Rights of Asylum Seekers Within the Canadian Refugee Determination System*, Inter-Am. Comm'n H.R., OEA/Ser.L/V/II.,106 doc. 40 rev. (2000).
- ²⁰ *The Death Penalty in the Inter-American Human Rights System: From Restriction to Abolition*, Inter-Am. Comm'n H.R., OEA/Ser.L/V/II., doc. 68 (2011).
- ²¹ *Report on Terrorism and Human Rights*, Inter-Am. Comm'n H.R., OEA/Ser.L/V/II.116, doc. 5 rev. 1 corr. (2002).
- ²² *Rafeal Ferrer-Mazorra v. United States*, Case 9903, Inter-Am. Comm'n H.R., Report No. 51/01 (April 4, 2001), *available at* <http://cidh.org/annualrep/2000eng/ChapterIII/Merits/USA9903.htm>.
- ²³ *Report on Immigration in the United States: Detention and Due Process*, Inter-Am. Comm'n H.R., OEA/Ser.L/V/II., doc. 78/10 (2010).
- ²⁴ *Medellin, Ramirez Cardenas and Leal Garcia v. United States*, Case 12.644, Inter-Am. Comm'n H.R., Report No. 90/09, OEA/Ser.L/V/II.135, doc. 37 (2009).
- ²⁵ *Andrea Mortlock v. United States*, Case 12.534, Inter-Am. Comm'n H.R., Report No. 63/08 (July 25, 2008), *available at* <http://www.cidh.oas.org/annualrep/2008eng/USA12534eng.htm>.
- ²⁶ *Wayne Smith v. United States*, Case 12.562, Report No. 81/10 (July 12, 2010).