

Twenty Reflections on the Process of Reflection

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1 The inter-American human rights system has conferred prestige and relevance on the Organization of American States (OAS). In the era of dictatorships and civil wars, as well as in modern times, when democracies are called upon to address structural human rights issues, the Inter-American Commission on Human Rights and Inter-American Court of Human Rights have consistently served as the conscience of the hemisphere by supporting states (conditions permitting) and their inhabitants in the effective protection of human rights. Through individual case judgments, in loco visits, thematic rapporteurships, advisory opinions, precautionary and provisional measures, and thematic and country-specific reports, the system plays a pivotal role of condemnation and early warning in response to situations that undermine the consolidation of democracy and the rule of law. It serves to protect the rights of individuals when they are not duly guaranteed at the domestic level. The Commission and the Court have saved lives, and they continue to do so. The two bodies helped open up democratic spaces in the past, and today they are helping to consolidate democracies. They have struggled and continue to struggle against impunity, and they help ensure truth, justice, and reparations for victims.

Strengthening the inter-American system as a strategic objective of the reflection process

2 The process of reflection on the inter-American system should aim to strengthen it by identifying measures that will boost the effectiveness of its promotion and protection role and increase its capacity to adapt to hemispheric circumstances and respond to the requirements of each historical moment. Deliberations on reforms and strengthening of the system should seek to further states' compliance with their obligations and improve human rights promotion and protection on the ground. The process should focus on ensuring more and better individual and collective enjoyment of human rights and on supporting states in fulfilling their duties. Each proposal should be evaluated and scrutinized in light of these principles. The reforms should scrupulously avoid any initiative whose purpose or effect is to weaken the system's effectiveness.

3 The outcome of reflection should reinforce promotion and protection mechanisms that are working efficiently and enjoy broad support from the system's main stakeholders; consolidate areas in which the Commission and the Court have been successful; identify situations or groups that have not been accorded sufficient attention; and, finally, eliminate, modify, or overcome dysfunctional aspects that undermine the core objective of protecting human rights.

The actors of the inter-American system and their role and responsibility in the reflection process

4 The inter-American human rights system should be conceived as encompassing much more than the Commission and the Court. States create the system, assume the primary responsibilities, and are the object of the decisions of both bodies. States, however, should be regarded as multifaceted rather than monolithic, comprising myriad actors with different agendas, responsibilities, and visions. All of these actors, including foreign affairs ministries, judiciaries and legislatures, ombudsman offices, prosecutors and public defenders, and national, provincial, and municipal governments, have responsibilities for human rights in their respective jurisdictions. The OAS and its organs, in particular the General Assembly, the Permanent Council, and the Committee on Juridical and Political Affairs, have important duties with respect to the Commission and the Court, such as electing their members, discussing their annual reports, approving their budgets, adopting new human rights instruments, and acting as collective guarantors of the system. The secretary general, too, has important powers within the system: he can influence the Organization's agenda, has the final word in the appointment of Commission officials, and is able to interact politically with states and with the human rights bodies themselves.

As the system's main users, civil society organizations—understood in the broadest sense, and not confined to nongovernmental human rights organizations (NGOs)—play a pivotal role in the network of relationships that makes up the inter-American system. They submit complaints, provide information to the official bodies and to societies, assist and counsel victims, and train local actors. Lastly and most importantly, the system

includes the entire societies, in particular the victims of human rights abuses who turn to the system seeking the justice that has eluded them in their own countries. The inherent purpose of the inter-American system is to protect their rights. Rather than focusing exclusively on the Commission and the Court, any reflection on the system must take all of these actors into account and examine and evaluate the roles they play in the promotion and protection of rights throughout the Americas.

5 This means that states should facilitate broad and robust NGO participation and interaction as a contribution to constructive dialogue and to a deeper understanding of the human rights situation. The process must ensure the full and timely participation and inclusion of NGOs representing diverse sectors of society, particularly local and national organizations and other social movements that interact with the system.

A serious and informed reflection process

6 Discussions about the evaluation, reform, improvement, or strengthening of the inter-American human rights system do not typically start from the region's historical context, human rights needs, or pressing challenges. And while the terms "evaluation," "reform," "improvement," and "strengthening" tend to be used interchangeably, they actually have very different meanings and purposes and reflect divergent positions concerning the current and future value of the inter-American human rights system.

7 In general, references to evaluation and reform are tied to assumptions that the inter-American system is not doing a satisfactory job, that its *modus operandi* is one of confrontation with states (a throwback to the era of dictatorships), or that it fails to properly uphold the "rights" of states that appear before the Commission and the Court. As a result, "evaluation" and "reform" of the system usually are taken to mean placing limitations on the Commission's powers. The terms "improvement" and "strengthening," in contrast, tend to communicate that the system is legitimate and effective and that measures should be adopted to ensure that states comply with the decisions of the inter-American bodies, incorporate inter-American standards into domestic law, broaden victims' access and participation, and increase the system's operating budget.

8 Over the past 20 years, states consistently have expressed their proposals in a volatile and contingent manner, usually in the form of individual reactions by state representatives, rather than as coherently articulated policies. Such proposals often surface in response to a particular

decision or report by the Inter-American Court of Human Rights, or, more recently, to a particular Court judgment. Rarely are they based on a detailed examination of the actual situation and human rights needs of the countries.

The point of departure for the reflection process: The human rights situation in the countries

9 All OAS processes and initiatives must take into account the changing context and structural challenges of protecting human rights to which the system will have to respond. The reflection process is misguided to the extent that it confines itself to proposals to reform the Commission's or the Court's rules of procedure or to a discussion of admissibility procedures, hearings, precautionary measures, the Commission's role vis-à-vis the Court, and so forth. In other words, it is a mistake to focus on individual petition procedures instead of examining the human rights problems and needs of each country and of the region as a whole and offering a profound reflection on whether states are complying with their inter-American human rights obligations.

10 A serious reflection process should begin with an assessment of the human rights situation in the countries and in the region. Only after obtaining such a clear picture is it reasonable to ask what type of system is required and necessary for the present time and for the next 50 years. The reflection process should also be based on knowledge, data, and careful observation of the full range of human rights needs in the region and the circumstances of each country. Statistical data on the work of the Commission and the Court and the application of their decisions by Member States should be generated in order to obtain a clear assessment of the system.

11 The reflection process should not take an exclusively procedural approach, concentrating on the rules of procedure or case-processing procedures of the system's bodies. Rather, it should adopt a primarily *substantive* approach that focuses on the human rights demands in the region and the system's response to them. This requires an examination of the inter-American system's role on a regional political stage characterized by flawed democracies, serious problems of social exclusion, and institutional deterioration.

Strengthening the inter-American system requires national reform

12 States must institute national reforms that include ratifying inter-American treaties and fulfilling their

fundamental duty to apply them, accepting the Court's jurisdiction, withdrawing reservations, incorporating inter-American treaties into domestic law, strengthening the capacity of national human rights entities, providing education and training on the way in which the inter-American system operates, and complying with the decisions issued by its bodies.

13 States must revalidate the Inter-American Commission and Court as the authorized interpreters of inter-American instruments. They must reaffirm that rejecting or failing to give effect to their decisions is incompatible with the essence of the inter-American system and weakens states' commitment to human rights. States must also confirm that their obligations with respect to inter-American instruments and the decisions of the Commission and the Court extend to all branches and levels of government.

Strengthening the inter-American system requires reforms within the OAS

14 States should act multilaterally at the level of the OAS to improve the way in which the Commission's reports and the Court's judgments are received and examined by its political bodies.

15 The OAS must guarantee sufficient funding for the Commission and the Court to perform all of their functions. At least 25 percent of the Organization's budget should be allocated to the two bodies.

16 States should consider adopting measures to improve the procedures for appointing and electing the members of the Commission and the Court, to ensure their independence and technical qualifications. To this end, states should widely publicize vacancies at the Commission and the Court and appoint the best-qualified individuals after exhaustive national consultations. The OAS should establish a transparent process for electing members of the Commission and the Court.

17 The OAS should centralize its human rights work. Article 2 of the OAS Charter should be amended to include the promotion and protection of human rights as one of the Organization's essential purposes. Moreover, to rectify an important shortcoming, the Court should be incorporated into the Charter, which currently recognizes only the Commission. The Charter should accord normative protection and recognition to the principles at the heart of the system's effectiveness, legitimacy, and credibility, that is, the independence and autonomy of the Commission, the Court, and their respective executive secretariats, and the

binding nature of the decisions of both bodies.

18 The OAS should advocate and, ideally, require that all Member States become parties to the American Convention on Human Rights and accept the jurisdiction of the Court. To this end, sufficient incentives should be established so that all Member States attain this goal within a reasonable period of time. The year 2019, for example, which is the 50th anniversary of the adoption of the American Convention, might be an appropriate target date for achieving universal adhesion to the Convention and the jurisdiction of the Court. At the end of the proposed time frame, the OAS should consider whether those states that have not adhered to this core human rights treaty can continue to be part of the Organization or enjoy the same rights as the states that participate fully in the inter-American system.

19 Each state should set up a national mechanism to coordinate, promote, and implement inter-American decisions as a means of facilitating compliance and following up on recommendations. The mechanism would necessarily involve the most relevant government agencies and ministries as well as civil society representatives. The Commission should be a permanent member of this body and should participate periodically in its meetings to provide technical advisory services, share its regional and historic experience, and spotlight best practices. This national mechanism, and the Commission itself, should report to the OAS every six months. Victims should be invited to participate in the meetings convened by this mechanism when their cases are being analyzed and to submit their observations to the OAS.

20 The Inter-American Democratic Charter should be amended to link the Organization's response mechanisms to crises of democratic governance with the goal of ensuring full enjoyment of human rights. It should identify serious, systematic human rights abuses and repeated and consistent failures to comply with the decisions of the human rights bodies as factors that trigger the mechanisms to safeguard democracy included in the Democratic Charter. In order to avoid intensifying a crisis, which often leads to institutional breakdown or political violence, the Democratic Charter should set up some type of preventive reaction mechanism for response to reports or early warnings issued by the Commission. The Court should have the capacity to generate and trigger the mechanisms for safeguarding democratic institutions set out in the Democratic Charter (Articles 18 and 20). ■