

## **THE REFORM PROCESS OF THE IACHR: IS THERE LIGHT AT THE END OF THE TUNNEL?**

**Katya Salazar**  
Executive Director  
*Due Process of Law Foundation*

### **Background**

During the General Assembly of the Organization of American States (OAS) held in San Salvador in June 2011, member States put in motion a reform process of the Inter-American Human Rights System (IAHRS). They decided to form a special working group to reflect on the workings of the Inter-American Commission of Human Rights with a view to strengthening the Inter-American Human Rights System. The working group was charged with preparing a set of recommendations to be submitted to the permanent Council of the OAS by the end of the year.

Although this was not the first time that an initiative to examine the Inter-American system was carried out, it was the first time such an initiative was promoted in the midst of such a widespread aggressive and negative environment against the Inter-American Commission on Human Rights (IAHRC). This time, the initiative to evaluate the IAHRS was further triggered by Brazil's strong rejection of the Commission's precautionary measures to suspend the construction of a dam that affected indigenous communities in the Brazilian forest. In response to the IACHR's order, Brazil recalled its Ambassador to the OAS, withdrew its candidate to the IACHR, and suspended payment of their fees to the OAS.

The public statements by the General Secretary of the OAS indicating that the precautionary measures issued by the Commission were not compulsory further complicated the situation. These unprecedented occurrences and the subsequent creation of the Working Group marked the start of a series of private and public discussions that culminated in the Working Group's final report and recommendations for the IACHR and for the member States, which were submitted to the Permanent Council in December 2011.

The Working Group's final report was approved in January 2012 and contained 6 recommendations for the member States and 53 recommendations for the Commission related mainly to: individual cases and petitions, friendly settlements, precautionary measures, chapter IV of the annual report of the Commission, the balance between the role of promotion and protection of the IAHRC, the rapporteurships and the financing of the IACHR. The document didn't address in depth other critical topics of relevance for human rights in the region,

including States compliance and the role that other key actors in the Inter-American system could play in ensuring advances in human rights.

The reform process is currently at a decisive stage. The last General Assembly – held in Cochabamba, Bolivia in June 2012 – instructed the Permanent Council of the OAS “**to draw up proposals for its application in dialogue with all the parties involved,**” on the basis of the Working Group’s report and recommendations approved in January 2012. The IACHR –which has taken the reform process seriously, has already formulated concrete changes that respond to the States’ concerns while respecting other actors’ expectations and preserving advances in human rights protection. After many public and private discussions, meetings, public events and consultations with relevant actors all over the region, on February 15, 2013, the IACHR opened for public consultation a set of potential reforms to its rules, practices and policies incorporating most of the recommendations made by the Working Group in its document of January 2012.

### **Current state of the process**

During February and March, the Permanent Council has been discussing its final position on the reform process and is due to present a new report to the Extraordinary General Assembly to be held on March 22 in response to the mandate “to draw up proposals for its application [*of the recommendations*] in dialogue with all the parties involved”. The Permanent Council has had a difficult time reaching consensus; by March 15st, 2013, the States had approved just a few paragraphs related just to the first chapter of the recommendations report, out of 7 chapters.

The first week of March was very important for the reform process. On March 7, the Permanent Council held a session with civil society organizations (in the morning) and with the IACHR (in the afternoon) to discuss its reform proposal. These sessions were a good indication of what to expect during the extraordinary General Assembly (March 22). On March 8, an “informal meeting” (promoted by Ecuador and planned to take place in Guayaquil, Ecuador) of State members to the American Convention was scheduled. Although *member States of the Convention* is a category that lacks legal status within the OAS, and basically implies to exclude the United States and Canada, Ecuador proactively advocated to raise the profile of this meeting and was able to convene an important number of foreign affairs secretaries (see: <http://www.mmrree.gob.ec/2013/bol0135.asp>, <http://www.mmrree.gob.ec/2013/bol0138.asp> and <http://www.mmrree.gob.ec/2013/bol0147.asp>). The meeting was postponed on March 6<sup>th</sup> due to Hugo Chavez’s passing away and was rescheduled for **Monday, March 11<sup>th</sup>** (<http://www.mmrree.gob.ec/2013/bol0166.asp> - see the topics mentioned in the press release).

Due to the particular enthusiasm of Ecuador in this meeting and the bilateral relations and common interests that other member States have with this country, it is likely that some foreign ministers and other high level officials will attend the meeting and that it will serve as an attempt to shift the debate away from the Permanent Council and to generate unofficial arrangements among States – a potentially dangerous situation.

The agenda of the reform process calls for, on **March 22**, an extraordinary General Assembly will be held in Washington, DC where the final decisions will be adopted in the (we hope) last stage of the reform process.

An additional distracting side issue is the fact that Argentina has been informally promoting relocating the IACHR headquarters from Washington DC to Buenos Aires. While States can decide where the Commission should operate, such a proposal is being discussed at a complicated moment and only helps to create further uncertainty for the IACHR. Parties should evaluate the benefits of relocating the Commission, given that all OAS organs are in Washington, DC.

### **States positions**

Mexico, Colombia, Peru, and Chile have had criticisms of the Commission, but have recently assumed a strong position in favor and have found the response of the Commission to the recommendations made by the member States to be satisfactory. At the beginning of the process, Brazil expressed strong positions against the IACHR, yet recently it has moderated its position and appears ready to accept most of the Commission's proposals. Ecuador, Venezuela, Nicaragua and Bolivia have recognized the importance of the Commission's report and its new attitude towards the States but have pending concerns that they want to discuss in the Guayaquil meeting. On the other hand, the United States, Canada and Costa Rica, have expressed their firm support for the IACHR throughout this process. Argentina, though it should be a strong supporter of the human rights system, is an enigma. Its recent proposal to move the Commission headquarters to Buenos Aires has added a new point of discussion to the process. Caribbean countries do not have a unified position: some follow ALBA countries, and others follow the position of the United States.

### **Conclusion**

The process that started 20 months ago will crystallize in the coming weeks. The upcoming decisions taken by the States and the Commission will have a serious impact on human rights protection mechanisms in the Americas. The process has threatened to undermine the work of the Commission and its rapporteurships, but the involvement and support of key countries and concerned civil society organizations, experts, academia, the media and other key actors, as well as the IACHR's willingness to consider and adopt changes while preserving the system, have helped counteract these threats and offered an alternative reform process that could lead to a genuine strengthening of the system. The reform proposed by the IACHR responds to States' concerns and allows the IACHR to continue promoting respect for human rights. Beyond the decisions that will be made in March, it is important for all these actors to push forward with the implementation of these reforms.

For March 22th, the ideal scenario would be that States approve a resolution welcoming the IACHR reforms and concluding the reform process so that the IACHR can start implementing the changes in a constructive environment. In a less desirable scenario, States are not satisfied with the IACHR reform proposals. Although the Permanent Council cannot impose changes on the Commission's procedures, they can continue the debate or threaten funding.

Besides the final outcome of the extraordinary GA, there will be remaining questions such as how to finance the Commission to reduce the (dramatic) backlog of cases and how to face the (lack of) compliance with the Commission recommendations. Up to now all the discussion has been around how the IACHR carries out its work, but there has been almost no discussion on the level of compliance by member States with the decisions and recommendations issued by the Commission and Court.