

"Our job is to denounce human rights violations committed by the States and this obviously causes tensions"

The vice-president of the Inter-american Commission on Human Rights (IACHR), Antonia Urrejola, points out that conflicts have always arisen between the Commission and the States concerning recommendations, but that these have now become more public. Urrejola, who is also the Special Rapporteur for Indigenous Peoples, says the strength of the IACHR lies in its declarations, but public accusations by the States of an alleged lack of impartiality or interference in internal affairs weaken them. Beyond frustration at the lack of compliance by the States, Urrejola says the judgments are creating a kind of "inter-American awareness" of human rights.

By Alejandro Parellada - 1st December 2020

Debates Indígenas: How do you interpret the constant questioning of multilateral organisations such as the Inter-American System?

Antonia Urrejola: We are indeed living in a time in which there is more discussion than ever before about how international bodies come to tell States what to do. It's a debate that has always existed, but now it has taken on greater force. Beyond the respective political inclinations of each government, there is a tendency to question human rights bodies in particular, putting forward a discourse of national sovereignty and of non-interference on a domestic level. The issue is particularly complicated in highly polarised countries. When the IACHR denounces a human rights violation in a given country, that denunciation is against the State, which has the obligation to prevent, investigate and punish such violations. Unfortunately, in the current context of polarization present in various countries in the region, our declarations, even when they are in accordance with our mandate and independent of the government in power, are often used in internal debate, depending on the political situation at the time. On the other hand, we must always remember that multilateral organisations such as the OAS or the UN are made up of states

and are therefore not supranatural but instead intergovernmental bodies. The OAS is no more than what its states want it to be. They determine the organisation's policies and priorities. However, it should be noted that the Commission, although part of the OAS, functions as an autonomous body. The seven commissioners who make up the Commission were elected by the OAS Assembly, but we have full autonomy and we do not answer to any State and in turn, our decisions reflect that autonomy.

DI: What is the main strength of the work the commission does?

AU: Our strength lies in our permanent monitoring of the human rights situation throughout the continent, in making serious violations of rights visible to the international community and especially in our recommendations and declarations to the States to make progress in preventing human rights violations or, if they occur, in investigating them and ensuring those responsible are held accountable. But the strength of our recommendations depends very much on the States' political will to comply with them. The same applies to the judgments of the Inter-American Court or the recommendations of the United Nations High Commissioner for Human Rights. But again, I insist that, beyond the strength of our declarations, implementation depends on the political will of the States concerned by these declarations. But as we find ourselves within a context where several States are questioning multilateral bodies, the political will tends to be diluted. An important part of our mandate is to monitor the human rights situation and to denounce human rights violations committed by States and this is obviously always cause for tensions. In the past, States resolved these tensions privately and diplomatically. Today, to the extent of multilateral bodies being questioned, these tensions and questionings are often made public and that does little to help resolve human rights issues, but instead often generates even more tension.

DI: The political cost of States ignoring the Commission does not seem very high...

AU: I feel like in the past, those in power felt that there was a political cost, a kind of moral damage, if they were to publicly oppose themselves to the commission. Today, this is no longer the case and often this cost is insignificant. Criticism of the decisions or reports of the IACHR or the Court, questioning our mandate or objectivity by some States, sometimes by the presidents of the

republic themselves, tells us that in many cases there is no cost whatsoever to questioning the Inter-American System or the work of human rights protection bodies in general. On the contrary, sometimes these questionings - that we are intervening in internal affairs or that we are politicized and biased - are made for reasons of internal policy, and this not only weakens the work of the human rights bodies, I insist, but the very defence of human rights as such. That is what worries me.

DI: How do victims react to the system's slow pace or ineffectiveness?

AU: Many human rights organisations feel frustrated about the fact that we seem to be able to do no more than denounce, time and again, the same human rights violations. And they demand we do more. The court, for its part, issues judgements determining responsibility for human rights violations, establishing recommendations to states and following up on compliance with the judgments. But it can't force states to comply with the judgments either. The strength of the ISHR lies in its declarations and judgments. States, by virtue of their own sovereignty, submit to the system and, by virtue of the principle of good faith, must comply with the recommendations. And when serious violations of human rights occur, people rightly think that the system is insufficient.

DI: How do you view the efficiency of the human rights system?

AU: In my opinion, both the United Nations system and the Inter-American System continue to be effective and play a key role. Firstly, by making cases of human rights violations visible. Because it has an effect, not only before the international community, but also internally. And, above all, I believe that it is a way to support the victims. On many occasions, the victims have expressed to us their interest in having their voice heard on the outside and the importance of feeling accompanied. At the end of the day, it is also a protective measure. Despite the weaknesses of the system, it is important for an international body to publicly point out when human rights are being violated. Or that precautionary measures are provided for a given person or group, since in some way there is a kind of inhibition on the part of states or state-owned agents. I believe that this continues to be very important in the region and in the context we find ourselves in. On the other hand, through the recommendations and judgments of the system's bodies, human rights

standards and principles are being established, which are permeating the spheres of public bodies and public policies, even if the immediate effect is not seen.

DI: And what is the effectiveness in countries with authoritarian governments that do not want to comply with the rulings?

AU: In authoritarian countries, where there is no division of power and impunity reigns, the commission fulfils its role of documenting human rights violations. Alongside the accompaniment of the victims, this documentation is very important for when processes are successfully initiated, such as in transitional justice, where human rights violations can be investigated and sanctioned. Therefore, this task of identifying and making visible - even if it's not with immediate effect - plays a fundamental role.

DI: How does the Commission work in the countries where you are Rapporteur, such as Colombia, Ecuador and Nicaragua?

AU: The Commission is concerned about the escalating violence in Colombia. After a brief period of calm following the Peace Agreement, the various armed groups have now regrouped. At a meeting of indigenous women in Medellin, we were informed that after the Peace Agreement, the armed groups were not eliminated, but instead the actors changed. One leader told us they had previously managed to exist with the FARC, because although they had serious conflicts with them, they knew who was who and where not to go. There was a kind of pact of coexistence. But with the Peace Agreement, new, unknown armed groups appeared, putting pressure on their territories. These were FARC dissidents, paramilitaries and groups linked to drug trafficking and with their arrival, the violence intensified. For the indigenous peoples, the map of actors changed completely and, therefore, so did their methods of defence. Regardless of what the indigenous organizations think, I don't think the state has quite understood the map of the new actors either. What is happening in Colombia is very complex and very tragic, following the hopes that were generated by the signing of the Peace Agreement. Despite the fact that we have had differences with the current government, I have to admit that from the IACHR we have managed to achieve a dialogue and advance in the implementation of precautionary measures, friendly settlement

agreements. The same goes for Ecuador. At the end of the day, both States provide us with information and their various authorities participate in the working meetings and hearings. Dialogue is possible, beyond the differences and tensions that logically exist in some situations.

DI: And what about Nicaragua?

AU: Unfortunately we have no dialogue with the Nicaraguan state. We maintain a monitoring mechanism, although we have no real influence on the state itself. But for the organizations, the work of the Commission continues to be fundamental in making human rights violations visible because, when in a way, the world has forgotten about Nicaragua. The State is not present at the working meetings or public hearings of the IACHR: during my three-year term as Rapporteur for Nicaragua, they participated in only one meeting to discuss the prior consultation with the Miskito people of the Atlantic Coast. And lately they have not responded to our requests for information either. I find it unfortunate that they accuse us of having a biased position. At the end of the day, if the state refuses to give us its own view of the facts, they cannot accuse us of not being impartial when they don't provide us with information.

DI: As Rapporteur for indigenous peoples, have you seen any significant changes in the use of the Inter-American System by indigenous organizations?

AU: The indigenous issue has always been present in the Commission. In fact, the Rapporteurship has been working since the 1990s and we have several thematic reports and cases that have reached the courts. I believe that the Interamerican System has made a great contribution in the area of indigenous rights. What has changed is related to the evolution of the indigenous organizations themselves, which is evident in the indigenous representation before the Commission. The organisations have become much more familiar with the system. And it has been very important for the Commissioners and officials of the Commission to have direct contact with the indigenous representatives. One of our priorities has been to provide indigenous organisations with direct training on the Interamerican System so that they can use it themselves. Without devaluing the role of the institutions supporting the indigenous movement, it has been important for us to have direct contact with indigenous communities and organisations.

DI: Has Covid-19 made this interaction more difficult?

AU: Paradoxically, in this time of pandemic and digital divide, thanks to Zoom, I have had even more contact with the representatives of the indigenous territories. Before, due to time constraints, during my country visits, we did not move far from the big cities, except for the in loco visits. Both for the organisations and for the Commission, this increase in direct dialogue has been a learning experience and we have been able to give more content to the perspective of the indigenous peoples themselves, without intermediaries, regarding the human rights situations that afflict them, their priorities and their proposals for tackling the challenges they face.

DI: However, the Inter-American Court has issued a number of important rulings in favour of indigenous peoples who do not comply...

AU: I fully understand the frustration of the organizations in terms of the effectiveness of the system. But I would like to highlight two issues. On the one hand, the effect of the judgement on each individual case. And the second is the importance of the judgement in the evolution of human rights standards. Judgements have a multiplying effect on all states, on public policies, on legislation and on the awareness of complying with the standards that these judgements set out. The court's rulings are interpretive of the Inter- American Convention and the inter-American standards are developed through the judgements. Likewise, the judgements permeate the public policies of the states. The latest judgement of Lhaka Honat vs. the Argentine state argues for the right of indigenous communities to adequate food and water. It is true that the effects of these judgements take years, but the ruling is remarkable and shows the importance of the system and its evolution.

DI: This frustration is also associated with the setback of many rights.

AU: That is true and I am concerned about these setbacks. In public discourse, there are elected authorities in several countries in the region who are re-justifying human rights violations, torture or justifying the disproportionate use of force by police in demonstrations. Security forces are once again using repressive force that had been unheard of on the continent. The problem is that

the excessive use of force is beginning to be justified by society and we are returning to an attitude of "them" and "us". Therefore, I believe there are setbacks that go beyond the discourse of some authorities, who undoubtedly bear much of the responsibility for this, there is also a setback in the civic debate. On the one hand, we are making great progress in human rights standards and raising awareness, but on the other hand, we are seeing that human rights violations such as extrajudicial executions or torture are once again being accepted or justified. It took us many years for clear standards to exist on issues related to crimes against humanity, for example, torture, and now we see how many sectors of our societies are once again justifying some of these violations.

DI: In the face of these setbacks, where does your hope lie?

AU: I'd like to reiterate that I understand the frustration of people who need solutions in the face of displacement, threats and killings. And unfortunately, often the people who fought for these sentences don't get to see the impact they have made. But beyond that, the Commission's recommendations and the Court's rulings are generating a kind of "inter-American awareness" regarding human rights. And that is very positive from the point of view of respect for human rights in the region.

My hope lies with the victims and their families. On every trip I have had to make as Commissioner, I have heard heart-breaking stories from victims and their families throughout our continent. There is something of great importance that I always carry with me, which is a role that is not in the convention, nor in the OAS charter, nor in the IACHR regulations or statute. Nor is it in the doctrinal analyses of inter-American jurisprudence or the impact of the system. It is in fact, the reparative role that the IACHR has, simply by being a space where the victims are being listened to. It is impossible to build a democratic country without the victims being given a space to tell their stories. And I think that often, the IACHR succeeds in providing that space. At the end of the day, to be able to lend an ear to the silences that want to be heard, is without a doubt one of the IACHR's greatest contributions and impacts and one of which I am very proud to be a part of.

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I always remember my teacher and great human rights defender, who recently passed away this year, José Zalaquett, who said: "If you are thinking of establishing a link between the actions we develop and concrete changes, you are in the wrong business. In human rights, you shoot an arrow and you don't know where it will land. Success is measured by the number of arrows you shoot". To a certain extent, that is our job.

Antonia Urrejola is Vice-President of the Interamerican Commission. She is the Special Rapporteur for the Rights of Indigenous Peoples. She is the Rapporteur for Truth and Justice and Rapporteur for Nicaragua, Colombia, Ecuador and Guyana. Her mandate ends on 31 December 2021.