Challenges and Future of the Inter-American System on Human Rights

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My name is Armstrong Wiggins and I am the Director of the Indian Law Resource Center, Washington, D.C. Office. I thank you for giving me the opportunity to be with you on this wonderful occasion to celebrate the 50th Anniversary of the Inter-American Commission on Human Rights and the 30th Anniversary of the Inter-American Court of Human Rights. I want to express the warm congratulations and good wishes of my colleagues at the Indian Law Resource Center. As a Miskito Indian leader I want to express my personal thanks and congratulations, because the Commission and the Court have played an important and powerful role in my own life as a human rights advocate for my people in Nicaragua. The Inter-American System has done an enormous amount not only for me, but for the rights of indigenous peoples in the Americas. We commend your leadership, which has helped guide other areas of the world in the defense of the rights of indigenous peoples.

The Indian Law Resource Center was founded in 1978. We provide legal assistance to protect the lands, resources, human rights, environment and cultural heritage of Indian nations and indigenous peoples in the United States and throughout the Americas. We have been working with the Commission and presenting cases to the Commission for more than 30 years. Some of the important historical milestones of this collaborative work include:

- The Yanomami case which was the first case involving the rights of an Indian people in the Americas, and it was a case of a tragic nature. The year was 1979. Massacres of Indian people were relatively common in those years.
- We helped the Miskito leaders of Nicaragua to seek the aid of the Commission during the years of conflict in the 1980s, and this lead to changes in the Nicaraguan Constitution in 1987.
- In 1995, we filed the Awas Tingni case that resulted in a landmark ruling by the Inter-American Court of Human Rights in 2001 protecting indigenous peoples’ collective land...
and resource rights.

- We filed a crucial case on behalf of the Maya people of southern Belize, demanding recognition of their land and resource rights. At the time, Belize denied that the Maya people owned any land at all! Again, the Commission developed the law to protect the Maya people.
- We also filed the case of Mary and Carrie Dann against the United States for taking the lands of the Western Shoshone Nation, and for applying racist laws and discriminatory practices to Indian peoples and their lands.

We have seen the Commission change greatly through the years. When we began, the Commission’s procedures were simple and had some of the character of historic times when those in power handed out justice or favors as a matter of grace. Gradually, as more and more lawyers and other advocates came to the Commission, we demanded more procedural rights - more due process of law. The Commission responded very positively to this challenge. The Commission improved its procedures, improved its efficiency, and became increasingly sophisticated.

The Commission became more like a court and more like a modern fact-finding body. This was very good. But the Commission also retained a good deal of flexibility and informality that allowed it to be open and helpful to victims of human rights violations. The Commission and its staff continued to develop new ideas that enhanced its effectiveness.

The Commission through these years was creative and active, especially in regard to creating a draft American Declaration on the Rights of Indigenous Peoples. But this work needs to be completed. The Commission recognized the need to develop international human rights law in a more active way than could be done on a case by case basis. This creativity is one of the very best things about the Commission. We would like to have the Commission play a more active role in the standard setting work at the OAS. Apart from a universal declaration on the rights of indigenous peoples, there is a consistent regional body of law developed by both the Commission and the Court that is supposed to expedite the negotiation process. However, states ignore such a body of law on the rights of indigenous peoples throughout the negotiation process. The Commission should not stay silent before such an attitude. On the contrary, it should engage in the negotiation process by stating the governing principle of law on the issue under negotiation and by promoting the respect of such a principle by all parties. The Declaration is not yet adopted, and I fear it could become an orphan if states do not act more seriously on it.

The Commission has also been innovative in conducting thematic hearings, in making visits in loco, in appointing rapporteurs, and in convening experts on important topics. The Commission has done a fine job of making itself a highly respected deliberative, court-like body. That development should continue. I have no doubt that it will. It is terribly important to have such a body to decide cases, to apply human rights law in real situations, and to develop the law to be more effective. But as we all know, by the time a case is filed, human rights have already been violated.

Contemporary global initiatives require the Commission to assume an immediate preventive stance towards the human rights at risk. In this regard, its role to promote human rights and prevent further violations plays a pivotal role, especially when an action after a violation does not afford a timely response to current challenges. For instance, the reality today is that indigenous lands are under increased threat because much of the world’s natural resources are left in the lands and territories of indigenous peoples. Infrastructure and extractive industry projects on indigenous lands usually infringe indigenous peoples’ collective human rights, such as property rights to land and natural resources and the right of self-determination. These projects are taking place throughout our region and are funded by multilateral development banks. Similarly, the REDD projects (Reduction of Emissions from Deforestation and Forest Degradation) in developing countries, which currently are part of a larger debate on climate change, will impact indigenous peoples’ fundamental rights once they develop on indigenous lands. These projects are going to be developed in almost all tropical areas across the region. The Commission should ensure that the human rights component of development and REDD projects is included in the states’ development agenda by providing them with general guidelines on how such rights might be violated and requiring them to make a human rights impact assessment prior to their planning and implementation. The Commission should not wait to have a case filed in order to take the necessary action.

The practice of issuing precautionary measures can be very helpful in trying to prevent human rights abuses. However, more needs to be done. Again, this is where the Commission’s flexibility and creativity could be most useful - in doing more to prevent human rights abuses rather than reacting to abuses after they have already occurred.
In the future, I wish that the OAS would improve the mandate of the Commission to make its reports and decisions more effective, to require states to respond to the Commission’s recommendations, and perhaps even to make the Commission’s decisions binding on states. Right now, we see the problems associated with states, like the United States, that refuse to ratify the Convention. As is the case with the Commission’s recommendations in the Mary and Carrie Dann case, the United States, and other states, can simply ignore the Commission’s recommendations. This problem has to be addressed if we are ever to see the full implementation of and respect for human rights of the citizens of the Americas.

It is tremendously important for the Commission to continue its role as an innovator, as a body that constantly creates new methods for promoting and protecting human rights. The Commission needs to continue finding new ways to educate, promote human rights, and mobilize people and institutions to defend human rights. More attention to human rights is needed on the part of government officials and institutions, domestically and internationally, and on the part of Civil society.

I hope the Commission will continue to find more new methods. Let us work to improve the mandate and the authority of the Commission. Let us try to increase the budget and staff that will be needed in the future. I would like to see an even stronger communications campaign by the Commission aimed at building understanding and support for human rights and at gaining compliance and implementation by states. I would like to see more kinds of activities such as conferences, seminars, studies, activities, educational programs, capacity building for lawyers, and other means for coping with human rights violations.