

PRESENTATION
COMMISSIONER JUAN E. MÉNDEZ
Inter-American Commission on Human Rights

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I have been asked to take part in this introductory panel in order to provide an overview of the topic of implementing international human rights protections in the context of the Inter-American Commission on Human Rights and its work. I would like to address three aspects of this subject in my presentation. First I will discuss briefly the normative basis for member states' responsibility to give domestic effect to the protections of the inter-American system, including the Commission's decisions. Second, I will highlight the importance of cooperation between the institutions and member states of the Organization of American States as well as civil society in creating effective mechanisms for following up on the implementation of the decisions of the system's human rights bodies. Finally, I will provide some examples of the ways in which member states have given effect to the Commission's procedures and decisions, as well as suggestions as to how they might do so in the future.

Let me begin by picking up on some of the comments made by Commissioner Altolaguirre in her introduction to this event, in particular her observations concerning the longstanding importance that the issue of implementation has played in the history of the Commission's work. It has long been recognized that when states formally granted the Commission the authority to receive and consider individual petitions in 1966, this authority was premised on a presumption that measures recommended by the Commission in respect of complaints would be adopted by respondent states, in default of which certain penalties would follow. As observed in the Commission's second report on the right of petition in 1970,¹ the Commission's ability to make public its final report concerning an individual complaint is intended to function as a sanction, where a state fails to take satisfactory measures required in the Commission's decision to remedy human rights violations. As a consequence, monitoring and evaluating implementation of its decisions by member states is among the Commission's central responsibilities.

The Commission's initiatives in this regard have continued and evolved to the present day. In recent Annual Reports, for example, the Commission has included series of recommendations concerning areas in which steps have needed to be taken toward full observance of the human rights set forth in the American Declaration of the Rights and Duties of Man and the American Convention on Human Rights. In its 1998 Annual Report, the Commission recommended, among other things, that member states take measures to improve the administration of justice within their respective jurisdictions and to adopt legal mechanisms for the execution of the Commission's recommendations in the domestic sphere.

The Commission's efforts to induce compliance with and implementation of the protections of the inter-American system rest upon a self-evident premise – that the rights and freedoms contained in the hemisphere's human rights instruments will only have meaning for the region's population when member states, as the primary guarantors of those protections, give them effect within their domestic systems. This notion is expressly articulated in Article 2 of the American Convention, which obliges states parties to adopt, in accordance with their constitutional processes and the provisions of the Convention, such legislative or other measures as may be necessary to give effect to the rights and freedoms under the Convention.

Notwithstanding the basic nature of this proposition, compliance with the decisions of the

¹ See *The Right of Petition (Second Report)*, INTER-AM. Y.B. HUM. RGTS. 1969-1970, 398, 434.

Commission remains lacking. When called upon to account for this deficiency, states have on occasion contended that the Commission's decisions are only advisory in nature and do not give rise to binding legal obligations on the part of states. While arguments might be put forward on both sides of this issue, pursuing a debate as to the binding nature of the Commission's decisions misses the point. Whether or not the Commission's decisions may be considered obligatory as a matter of international law, they constitute one of the principal mechanisms of the inter-American system by which the hemispheric human rights commitments of member states are defined and clarified and are therefore equally the subject of member states' good faith obligation to perform their treaty obligations – as noted above the individual petition system itself was predicated on the notion that states would implement the Commission's recommendations or face the sanction of publication. Simply put, member states' normative obligation to implement the Commission's decisions flows from the foundation and composition of the inter-American human rights system itself.

In particular, through their ratification of the OAS Charter, the American Convention and other pertinent instruments of the inter-American system, member states have committed themselves to respecting and ensuring respect for the protections contained in those instruments. They have also created the Commission as an independent and specialized supervisory body charged with promoting the observance and protection of these rights, and whose responsibilities include monitoring observance of these obligations. In accordance with the principle of effectiveness, member states must have intended for the system and its supervisory mechanisms to be capable of fulfilling these mandates. Ensuring that the Commission's recommendations and decisions are respected is a critical requirement in this regard.

It is important to recall that the responsibility for ensuring implementation of international human rights commitments lies foremost with member states, with international institutions like the Commission playing a complementary function. Where member states fail to meet this obligation, however, the Commission is charged with reinforcing the effective protection of the human rights of those affected. The Commission cannot effectively fulfilled this mandate unless the member states of the system, individually and collectively, act as the guarantors of the system, by implementing and ensuring the implementation of the Commission's recommendations and decisions.

This leads me to the second point that I wish to emphasize, namely the importance of developing mechanisms within the inter-American system to better identify and remedy failures to implement the Commission's determinations. For its part, the Commission has taken steps in recent years to address the issue of compliance. In its 2001 Annual Report, for example, the Commission included for the first time a section on follow up on compliance with IACHR recommendations in individual cases. This section emanated from OAS General Assembly Resolution AG/RES. 1828 (XXXI-O/01) adopted in San José as well as from Article 25 of the IACHR Rules of Procedure, and was comprised of a table that listed the recommendations made by the Commission in certain published reports and indicated whether those recommendations had been complied with, in full, in part or not at all. To prepare this section of the report, the Commission requested information from countries, and in the name of transparency also decided to post on the website all responses from states that had specifically requested that their submissions be published. Through these initiatives, the Commission has hoped to assist the states and organs of the system to identify the areas in which efforts to ensure implementation of its findings must be directed.

As I mentioned when I presented the 2001 Annual Report to the Permanent Council's Committee

on Juridical and Political Affairs, however, the Commission was concerned with the fact that the 2001 table showed no instances of full compliance. As one possible measure to address this problem, the Commission expressed hope that the Permanent Council and in its Committee on Juridical and Political Affairs would establish a mechanism for the periodic monitoring of compliance with Commission and Court decisions which, in the Commission's view, would make palpable the principle of collective guarantees that underlies the inter-American system for the protection of human rights.

This is not to say that the implementation of the inter-American system's protections, including the Commission's recommendations, has witnessed no progress. Several recent examples of legislative, judicial and other initiatives through which the system's procedures, principles and decisions have been given effect can be identified.

In the case of *Maria Eugenia Morales de Sierra v. Guatemala*,² for example the petitioners alleged before the Commission that various provisions of the Civil Code of the Republic of Guatemala that established the legal regime defining the role of each spouse within a marriage, created distinctions between men and women that were discriminatory and therefore contrary to Articles 1(1), 2, 11, 17, and 24 of the American Convention, as well as the Convention on the Elimination of all Forms of Discrimination against Women. During the processing of the case before the Commission, the Government informed the Commission that Congress had undertaken measures to reform the Civil Code in order to correct or modify provisions which were alleged to impede the ability of women to fully exercise their rights. Subsequent to the Commission's adoption of its merits report in the case, the Guatemalan Congress reformed all but two of the challenged provisions.

Examples of judicial implementation of the inter-American system's human rights protections have also arisen. In the April 2, 2001 judgment of the Eastern Caribbean Court of Appeal in the consolidated appeals of *Newton Spence v. The Queen and Peter Hughes v. The Queen*,³ which were subsequently upheld by the Judicial Committee of the Privy Council, a majority of the Court of Appeal concluded that the mandatory imposition of the death penalty in St. Vincent & the Grenadines and St. Lucia was unconstitutional under Article 5 of the Constitutions of Saint Vincent and Saint Lucia⁴ as inhuman and degrading punishment. In his reasons for judgment, Chief Justice Byron referred to and considered the Commission's jurisprudence on the mandatory death penalty issue and concluded that "the principles they espouse are consistent with the provisions of section 5 of the Constitution."⁵

In some instances, states have developed specific mechanisms for the domestic implementation of the Commission's recommendations. After the publication of the Commission's "Second Report on the Situation of Human Rights in Colombia", for example, the Colombian State eliminated, in accordance with one of the Commission's recommendations, certain domestic legal barriers to compensation for human rights violations. Moreover, Colombia has codified a special

² *Maria Eugenia Morales de Sierra v. Guatemala*, Case No. 11.625, Report No. 28/98, Annual Report of the IACHR 1997, at 144, para. 2.

³ *Newton Spence v. The Queen and Peter Hughes v. The Queen*, Criminal Appeal Nos. 20 of 1998 and 14 of 1997, Judgment of April 2, 2001 (Eastern Caribbean Court of Appeal).

⁴ Section 5 of the Constitutions of Saint Vincent and the Grenadines and Saint Lucia provide that "no person shall be subjected to torture or to inhuman or degrading punishment or other treatment."

⁵ *Spence and Hughes v. The Queen*, *supra*, para. 41.

mechanism to facilitate compliance with the Commission's recommendations regarding compensation.⁶

There are also numerous other mechanisms and initiatives that states might pursue in order to enhance the effectiveness of the inter-American system's human rights protections within their domestic jurisdictions. Central to its effectiveness is the dissemination of information about the system to states' population, as well as the development and implementation of information and training programs, particularly for state officials and employees – knowledge about the system has remained regrettably deficient in many states of the Hemisphere. Judicial training in this regard is crucial, for it is the judicial branch of government that shoulders much of the responsibility in interpreting and applying domestic and international human rights protections and serves as a check on other branches of government in this regard. At a more general level, governments should encourage colleges and university to include international human rights training in their legal, social science and other pertinent programs. In all of these areas, the Inter-American Commission can be of assistance by, for example, providing pertinent literature and making representatives available to explain the functions of the system.

It has also been the Commission's experience that international human rights protections are more effectively implemented when governments create bodies within the executive and legislative branches of government that are specifically charged with coordinating human rights policies among their various departments and agencies. Initiatives of this nature foster the development within governments of officials with in-depth and specialized knowledge of international human rights law. They also assist in avoiding inconsistent interpretations and applications of human rights protections in different areas of government, and streamlines information gathering and other activities crucial to participating effectively in international systems of human rights protection.

Finally, I would encourage all governments to take an proactive role in utilizing the human rights institutions of the hemisphere as resources to assist them in implementing their international human rights obligations. In this respect, the contentious jurisdiction of the Commission, while significant, is only one aspect of the Commission's role and mandate. Article 106 of the OAS Charter also charges the Commission with acting as an advisory body to the OAS in the area of human rights, and the Commission's Statute similarly emphasizes the advisory functions of the Commission in assisting governments to fulfill their human rights responsibilities. Accordingly, when governments encounter difficulties or uncertainties in implementing their human rights commitments, or when they seek to find new ways of giving effect to these obligations, I would encourage them to engage and dialogue with the Commission as a resource on these matters.

In these days of uncertainty, when the international community is struggling to deal with new and dangerous threats to its security, it is more important than ever for the institutions and governments of the OAS as well as civil society to cooperate in reinforcing the rights and principles for which our communities stand. Finding ways of improving the implementation of human rights protections is a crucial step in fulfilling this responsibility and I look forward to sharing ideas and experiences with you in the course of this working session.

⁶ On July 5, 1996, Colombia adopted Law 288, which provides that the National Government shall pay, after concluding the processing provided for by this law, the indemnification of damages caused as a result of human rights violations found in express decisions by certain international human rights bodies mentioned in the Law, including the Inter-American Commission on Human Rights and the U.N. Human Rights Committee. The procedural mechanisms for implementing such compensation are incorporated in the Law. *See* IACHR, Third Report on the Human Rights Situation in Colombia (1999) paras. 90-94, at 52-53.