Criticism of Inter-American Human Rights System

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The Ecuadoran government, along with other progressive Latin American governments such as those of Venezuela, Bolivia, Argentina, and Nicaragua, are challenging the role of the Inter-American System for the protection of human rights, created within the Organization of American States (OAS), which they accuse of being a political platform that seeks to discredit governments that have moved away from US influence.

However, in the case of the government of Ecuadoran President Rafael Correa, the challenges are contradictory, since it has used reports from the Inter-American Commission on Human Rights (IACHR) and the Inter-American Court of Human Rights (IACHR) to denounce human rights violations by previous administrations, such as that of former President León Febres Cordero (1984-1988), during which the largest number of extrajudicial executions and forced disappearances of political adversaries occurred. Correa has used commission reports to discredit rightist governments and the political parties that supported them.

Likewise, Correa validated the commission when he called on it to denounce human rights violations implicit in the March 1, 2008, bombing by Colombian forces in Angostura, Ecuador, which killed Ecuadoran citizen Franklin Aisalla and four Mexican students (NotiSur, March 7, 2008). This complaint, brought by the Procuraduría General del Estado (PGE), sought to have the Colombian government admit that the bombing violated international law and was an attack on Ecuador. The PGE called the action a massacre committed by a foreign government in national territory. The Colombian government tried to justify the action as necessary in the fight against the guerrilla insurgency of the Fuerzas Armadas Revolucionarias de Colombia (FARC), for it was able to eliminate guerrilla leader Raúl Reyes.

Correa reacts to allegations of abusive policies

Correa's criticism of the Inter-American System began when Special Rapporteur for Freedom of Expression Catalina Botero questioned some of his administration's measures that could affect freedom of speech such as suing journalists, seizing communications media, and drafting a new communications law that could severely limit the media's ability to do its job.

Likewise, the commission was criticized when it recommended precautionary measures to protect the rights of the directors of Diario El Universo, in the case of the lawsuit that Correa filed against them (NotiSur, Oct. 14, 2011) and in which various irregularities had been denounced that undermined the independence of the Ecuadoran judiciary, such as the charge that the president's lawyer wrote the opinion and gave it to the judge to issue.

Criticisms of the commission have also been tied to progressive Latin American governments' general criticism of the OAS, an agency that they say is not in keeping with the new regional geopolitics and remains a forum of US influence. The last Summit of the Americas, held in Colombia in April, seems to give credence to these criticisms, since the Latin American countries could not reach a political consensus with the US and Canada, resulting in the summit closing without a final statement (NotiSur, April 20, 2012).
The Ecuadoran criticisms are also related to the commission's apparent inability to judge the US, a country that would seem to be outside the jurisdiction of this international justice body, even though its judges have assumed jurisdiction in cases of violations by the US government such as arbitrary detentions at the Guantanamo Bay Naval Base. The August 2011 and January 2012 resolutions in which the commission calls on the US to close the prisons at this US military base would show that the commission has jurisdiction over the US government even when it ignores the resolutions.

Despite the defense of the Inter-American System by various human rights organizations throughout the region, the Ecuadoran Foreign Ministry is proposing to design a "new architecture of the Inter-American System," under the purview of the Unión de Naciones Suramericanas (UNASUR), and in which jurisdiction, especially that of the Inter-American Commission, would be defined with greater precision. Jurisdiction would only apply to issues of civil and political rights, and the jurisdiction regarding social, economic, and cultural rights would be limited, especially for environmental and collective rights, an area that the commission has begun to examine with vigor in recent years.

Collective rights and the Sarayaku case

On April 21, despite the criticisms, the commission visited the Kichwa people in Sarayaku, in the Ecuadoran Amazonía, to verify human rights violations denounced by this indigenous group.

Sarayaku is made up of six communities, within a territory of 135,000 hectares, for which the indigenous received title in 1992. In 1996, the Ecuadoran government granted oil-exploration concessions in these territories to Argentina's Compañía General de Combustibles (CGC). The concession was granted even though the requirement to consult the Sarayaku people before any oil activity began on their lands was not complied with.

To block the CGC's incursion, Sarayaku mobilized to safeguard its territory for seven months, in 2002-2003, setting up "Campos de Paz y Vida" in the middle of the jungle, where they wanted to stop the entry of the CGC, which came accompanied by armed Ecuadoran Army soldiers.

On Jan. 25, 2003, soldiers and CGC workers captured four Sarayaku youth. One of them, Fabián Grefa, said, "Members of the Ecuadoran Army detained us and took us to the CGC camp in Chontoa, where company workers brutally beat us, tied us up, and immobilized us on an anthill so the insects could attack our naked torsos."

Grefa's testimony was one of many the Sarayaku people submitted to the Inter-American Commission on Human Rights to demonstrate state violence. The commission called for precautionary measures for the Sarayaku communities and, when the Ecuadoran government failed to comply with its recommendations, took the case to the Inter-American Court.

Dr. David Cordero, president of the Fundación Regional de Asesoría en Derechos Humanos (INREDH), an organization that has filed many cases with the commission, said a ruling from this body generally has two parts, one referring exclusively to the case, in which it determines reparation and compensation measures, and the other that generally has greater legal and political weight and lays down general measures that a state must comply with in similar cases. "The Sarayaku case refers especially to prior consultation with indigenous peoples that must be carried out before any project is implemented on their lands, and that is what the Ecuadoran state wants to avoid," said Cordero.
In the Sarayaku case, the court is expected to generate case law regarding states' obligation to carry out prior consultation. This is seen negatively by states involved in development mining and oil-extraction megaprojects in the region, which is why they are trying to limit the importance of the commission's rulings, by discrediting them ahead of time.

Even though, during the commission's visit to Sarayaku, the Ecuadoran government delegation accepted the existence of human rights violations, saying that they were committed by previous administrations, it has also stated clearly that the requirement for prior consultation cannot limit the state's ability to extract natural resources in indigenous lands.

The Sarayaku position has also been clear: it will not allow any oil activity on its lands. Thus, the court has ended up at the center of the debate regarding the protection of collective rights, the rights of indigenous peoples, and, in Ecuador, the rights of nature. Whatever its ruling regarding Sarayaku, it will undoubtedly set a legal precedent in these matters and rekindle the debate on the limitations states should have when deciding policies that affect the rights of indigenous peoples and nationalities.

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