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Changes at Inter-American Commission on Human Rights Could Open Door to Impunity in Ecuador

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The work of the Inter-American Commission on Human Rights (IACHR) will be weakened if the member countries of the Organization of American States (OAS) accept the proposals of Secretary-General José Miguel Insulza, which aim to limit the IACHR's powers and change the process by which victims of human rights violations secure the commission's protection.

Latin America's history is filled with testimonies of massive human rights violations, especially during the military dictatorships of the 1960s and 1970s and subsequent authoritarian governments such as those of Presidents Alberto Fujimori (1990-2000) in Peru and Álvaro Uribe (2002-2010) in Colombia. Other countries, including Guatemala, Colombia, Mexico, and Honduras, continue to add cases to these infamous lists. Victims' families, in coordination with human rights organizations, have succeeded in getting the IACHR to accept their cases after national judiciaries have proven unable to investigate and bring to justice those responsible for the violations.

When it learns of alleged human rights violations in a specific country, the IACHR begins a consultation process with the government and the claimants to determine whether a violation has occurred. If it verifies the violation, the IACHR proposes to the government that it design legislative mechanisms to ensure that such violations are not repeated. At the same time, it calls on the government to set up an integral reparation process for victims or their relatives. The reparation is not only economic but is also aimed at ensuring that the memory of the victims and the events is not forgotten. In most cases, it also demands that the government publically apologize.

However, one of the IACHR's most valuable mechanisms for protecting victims of human rights violations or persons whose rights are at risk are its "precautionary measures," which are specific requests to the state to protect the rights of vulnerable persons or groups or to desist from policies or programs that could undermine rights.

Precautionary measures have become the most effective actions for protecting at-risk persons or groups; however, they have received the most criticism from governments affected by IACHR decisions, and those governments are now leading the reform process and aiming to control the commission's activities.

Strategy to control the IACHR

Venezuela, Colombia, Cuba, Argentina, Ecuador, and other countries have challenged the IACHR's authority and its resolutions, arguing that it is abusing its power. These countries are annoyed that the IACHR is increasingly exercising jurisprudence regarding collective rights and that it issues precautionary measures for communities being affected by the implementation of natural-resource-extraction projects, the construction of highways or dams, or the implementation of legislation that does not recognize collective rights.

As a result, some countries have shown their displeasure and have manifested their intention to leave the IACHR, beginning with Venezuela. In late April, Venezuelan President Hugo Chávez...
asked the Cabinet (Consejo de Estado) to analyze how the country could disavow the IACHR's jurisdiction.

Ecuador quickly followed suit, with a proposal to structure a new Latin American justice system within the Unión de Naciones Suramericanas (UNASUR). Foreign Minister Ricardo Patiño was given the task of announcing what he called the "new architecture for Latin American justice."

Argentina jumped into the fray on March 23, when, at an IACHR meeting to examine the situation of Argentina's indigenous peoples, requested by communities of the Confederación Mapuche, the Unión de Pueblos de la Nación Diaguita, and the northeastern Qom people, government representatives refused to answer commission members' questions.

In the heated atmosphere in early May, Insulza began a whirlwind tour of the countries that were challenging the IACHR to offer a series of changes that would limit the commission's authority by no longer allowing it to deal with currently thorny issues.

At the same time that Insulza was visiting Ecuador, the president of Ecuador's Corte Constitucional (CC) Patricio Pazmiño presented his candidacy for the position of IACHR executive secretary to replace Santiago Cantón, who had led the commission's advances during his 11 years in office. Cantón announced that he was retiring for "personal reasons," although he admitted that the Venezuelan government and others had pressured him to resign.

As of now, 10 candidates are vying for the executive secretary position, but there is also an unusual number of candidates for commissioner positions. Commissioners are in charge of analyzing cases and determining whether they meet the requirements to be admitted.

"I don't think that Pazmiño can become head of the IACHR secretariat because he does not have the necessary professional profile," said Farith Simon, professor at Quito's Universidad San Francisco and an expert on the Inter-American human rights system. "Greater attention must be put on naming commissioners, because that is where the states are going to put their emphasis to control the IACHR's actions."

Although Pazmiño lacks the necessary background, the correlation of forces could favor him, since other countries that do not want to be evaluated, such as Mexico, Paraguay, Peru, and the Caribbean countries, might join those that have already challenged the IACHR. Pazmiño has proven to be very loyal to Ecuadoran President Rafael Correa and has dismissed or forgotten cases that challenge resource extraction, information control, and the authoritarian use of justice that characterize the president. Something similar could happen in the IACHR to favor countries identified with the political views of Chávez and Correa.

**The proposed reforms**

During the meeting of the preparatory seminar on strengthening the inter-American system of human rights on May 30 at OAS headquarters in Washington, DC, Insulza announced the reforms that he would propose to the OAS General Assembly in Cochabamba, Bolivia, June 3-5.

Insulza considers it necessary to make explicit the criteria by which the commission decides whether a state is responsible for human rights violations and whether it is placed on the "black list." The proposal is to have "clear procedures" and look for "legal certainty," which implies "knowing exactly who has what rights and how they should be applied."
David Cordero, president of the Fundación Regional de Asesoría en Derechos Humanos (INREDH), says that "modifying these criteria will make it more difficult for victims seeking justice and will complicate access to the IACHR. It will also modify the time necessary to achieve "admissibility."

Cases now take an average of five years to achieve admissibility, which means that the IACHR is convinced that violations have occurred, after which it asks the state to negotiate an amicable solution, with the victims' agreement. If an agreement is not reached, the commission sends the case to the Inter-American Court of Human Rights, which can issue a ruling against the state.

Insulza will also propose changes in how the precautionary measures are written, which is the states' major concern. Precautionary measures are not covered in the IACHR Statute but were implemented through the Rules of Procedure, which is why several countries say that the commission is overreaching its authority.

"The IACHR can at times be very generous in issuing precautionary measures; but to restrict this ability can be damaging, since it will leave people vulnerable to state policies and could foster impunity," said Simon.

In effect, human rights defenders, such as those in Colombia, who have managed to survive until now, and indigenous and campesino communities such as the Sarayaku in Ecuador (NotiSur, May 11, 2012), which has been able to defend its territory, will be left unprotected if the IACHR's power is eliminated or reduced. "The entire protection system for human rights defenders in Colombia, such as bullet-proof offices and cars, security systems, and personal protection, are part of the IACHR's precautionary measures, and the Colombian state has had to implement them. If this ends, we will have more dead human rights defenders in Colombia," said Cordero.

Despite the risks, the IACHR modifications are in process. The only matters that remain to be seen are the extent to which its authority is reduced and whether the states will have won in their desire to shield themselves from claims against them generated as a consequence of their abuses.