

## FORUM OF THE INTER-AMERICAN HUMAN RIGHTS SYSTEM: THE ELIXIR OF LONG LIFE?

*Fórum Interamericano de Direitos Humanos: o elixir da longa vida?*

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## ABSTRACT

This article provides an account of the Inter-American Human Rights System as a feasible regional perspective to tackle rising authoritarianism and the multiple hardships anticipated by the return of neoliberal politics to the region. For such, it draws upon the rich history of the Inter-American Human Rights System and the on-site monitoring of the Forum of the Inter-American Human Rights System's inaugural meeting held in December of 2017, in Washington, D.C. The Forum of the Inter-American Human Rights System offers a privileged analytical focus, since it gathers broadened and up-to-date reflection on the potentials and challenges for fetching meaningfulness to the Inter-American Human Rights System.

**Keywords:** International Human Rights; International Institutions; Americas.

## RESUMO

Este artigo apresenta um relato do Sistema Interamericano de Direitos Humanos como uma perspectiva regional viável para fazer frente ao crescente autoritarismo e às múltiplas dificuldades previstas pelo retorno de políticas neoliberais à região. Para tanto, baseia-se na rica história do Sistema Interamericano de Direitos Humanos e no acompanhamento local da reunião inaugural do Fórum Interamericano de Direitos Humanos, realizada em dezembro de 2017 em Washington, D.C. O Fórum Interamericano de Direitos Humanos oferece um foco analítico privilegiado, pois reúne reflexões ampliadas e atualizadas sobre os potenciais e os desafios na busca de significância para o Sistema Interamericano de Direitos Humanos.

**Palavras-chave:** Direitos Humanos Internacionais; Instituições Internacionais; Américas.

The Americas have testified countless democratic and human rights recoil in recent years, despite of equipped with a regional human rights system. In the face of blatant discursive attacks, concrete backlashes and up-front contestation to human rights all over the region, many questions whether the Inter-American Human Rights System ("the Inter-American System") remains relevant.<sup>2</sup> Enduring for seventy years, this system has managed meaningfulness by keeping its dynamism, especially when regional conjuncture hints adversarial. In the very last couple years, when political hindrances intensified, initiatives for strategic planning and inter-institutional dialogue gained traction to bring up the power of human rights ideas. The Strategic Plans of the Inter-American Commission on Human Rights helped building a programmatic vision to cope with urgent challenges, priority themes and long-term goals.<sup>3</sup> The Joint Working Group of Commission

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<sup>2</sup> The Inter-American System was created with the adoption of the American Declaration of the Rights and Duties of the Man in 1948. Under the umbrella of the Organization of the American States (OAS), the Inter-American System comprises of two main bodies: the Commission (1959) and the Court (1979).

<sup>3</sup> The Commission compiled two Strategic Plans, each comprising the period of 2011 to 2015 and 2017 to 2021.

and Court sought to improve coordination among the two Inter-American bodies.<sup>4</sup> And, more recently, the Forum of the Inter-American Human Rights System (“the Forum”) stretched dialogue with the users of the Inter-American System.<sup>5</sup>

This article provides an account of the Inter-American System as a feasible regional perspective to tackle rising authoritarianism and the multiple hardships anticipated by the return of neoliberal politics to the region. For such, it draws upon two main sources: the rich history of the Inter-American System and the on-site monitoring of the Forum’s inaugural meeting, held in December of 2017 in Washington, D.C. The Forum offers a privileged analytical focus, since it provides broadened and up-to-date reflection on the potentials and challenges for fetching meaningfulness to the Inter-American System. While it serves as a showcase for high-concern topics in the Inter-American human rights agenda, its realization raised expectation for positive change within the Inter-American System, like the rapprochement between the Commission and the Court and increased cooperation with Member States and other participants. Despite of this, the Forum faces at least two significant challenges. Absorbing the diversity of interlocutors represents a major task, since widening audience is not the same as diversifying voices. Finally, debating politically sensitive issues (like corruption, for instance) in public fora raises the expectancy for faster actions in response. Hence, the agenda-setting at the Forum not only captures the regional momentum, but predicts the Inter-American system’s willingness and articulation to advance on such issues.

## 1. THE FORUM OF THE INTER-AMERICAN HUMAN RIGHTS SYSTEM: AMONG FRIENDS AND HERMANOS

The news about the novel practice at the Inter-American System came suddenly. Less than a month before its inauguration, the Commission published an extended invitation and a call for proposal for side events at the Forum. Albeit probably perceived as just another event on the disputed agenda of the Inter-American System, the launching of the Forum was an unprecedented step at the system. For the first time in history, the Commission and the Court were organizing an event of their own, which assumes a timely meaning when analyzed through extended historical lenses.

The now fifty-years-old institutional design of the Inter-American System combines the existence of a political body (the Commission) with a judicial tribunal (the Court). Together, they represent the possible result of ideas and efforts on human rights in a region shackled by

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<sup>4</sup> The Joint Working Group of Commission and Court, an initiative launched in 2016, is made up of the Presidents, Vice-Presidents and Executive Secretaries of both the Commission and the Court. It held three meetings so far. Available at: <[http://www.oas.org/en/iachr/media\\_center/preleases/2017/089.asp](http://www.oas.org/en/iachr/media_center/preleases/2017/089.asp)>. [Access: 22 Jan. 2020].

<sup>5</sup> The Forum of the Inter-American Human Rights System, a novel enterprise launched in 2017, consists of a yearly meeting to promote the debate over the present and future of the Inter-American System and key topics on the human rights agenda in the Americas. The objective is to build up constructive exchanges among the system, States, civil society, international organisms, universities, social and labor movements and general public. It is in its third edition.

democratic instability, authoritarianism and the lack of the rule of law. Taken such unlikely design and unsteady regional context together, it comes with no surprise that the Inter-American System's history collects chapters of rivalry between its two coexisting bodies.

The known plot of the Inter-American System's history narrates disputes between the Commission and the Court as early as the adoption of the American Convention on Human Rights ("the American Convention") in 1969. The Commission, first body created in 1959, saw its exclusivity threatened by the prediction of a regional court in this treaty (Farer, 1997; Goldman, 2009). In the Commission's view, the come-into-force of the American Convention could question its permanence in the Inter-American System, as well as its precedence to acknowledge human rights complaints. While the American Convention went under a ten-year ratification process, the Commission's activities were still much embryonic: its functions to file cases had barely expanded, although receiving denouncing letters was, by large, the most relevant doing in the D.C. headquarters at the time (Ramanzini, 2017). Notwithstanding, some Commissioners envisioned that the body's continuity could pave a more stable path for the human rights stand in the OAS than its replacement by a born-to-be tribunal (Dykman, 2008).

As contradictory as it may seem, the idea of the Commission's conservation appealed to some Member States under dictatorial regimes. For them, keeping a human rights body with a political nature sounded strategic, though unpleasant. It seemed a deal to ensure their permeability and potential control over the Inter-American System (by appointing commissioners, for instance), while also sending mixed signals to foreign audiences. Evidence of such argument lies in obscure episodes of the Inter-American System's history, when, on certain cases, the Commission was captured (albeit never entirely) by representatives of the military governments, something that produced perverse results, with long lasting effects (Bernardi, 2017).

Against all odds of the regional political affairs, the Court was installed in Costa Rica in 1979. The Court started its activities few years later surrounded by several difficulties, ranging from infra-structure needs to guaranteeing financial means. However, the main challenge, perhaps, came from the inside. While controlling the dispatch of cases to the Court, the Commission was determined to slow the pace (and the ambitions) of the novel tribunal. As a result, during its first decade of functioning, even apt to work on its capacities, the Court worked with four cases and nine advisory opinions only. The Commission played the gatekeeper position for more than twenty years, formally reviewing this status in 2001, when thematic rapporteurs and investigations of human rights complaints became its new flagship. With time, the clearer division of functions between the Inter-American bodies, secured by regulations, offered grounds for mutual mistrusts to start getting appeased. From a different perspective, lowering guards also facilitated the identification of common goals and shared struggles for the Commission and the Court.

The rapprochement of the Inter-American bodies intensified with the numerous episodes of financial crises and dramatic demands for budget increase. These events brought both parts

together to an important learning: “united we stand, divided we fall”. When jointly supported and articulated, the pleas of the Commission and the Court became more attainable. In the light of this, the institutionalization of the Forum at the Inter-American System contributes to overcoming historical marks and stigmas of the past. It provides conditions (time, space, audience) for brothers from D.C. to join the *hermanos* from Costa Rica in advancing relevant issues, some discussed on the follow.

### 1. SUBTLE - *PERO* CONSTANT - TRANSFORMATION: FROM SEPARATION TO COOPERATION

The Inter-American System has undergone several institutional transformations through the years: some notorious, as the creation of the Court, and more subtle ones, captured by close observation of routines and practices over time. In the latter case, the most striking ongoing renovation comprises the smooth move from separation towards cooperation, especially regarding the system’s relations to Member States and its external participants. While the Inter-American System traditionally lacks strong enforcement capacity to control States’ behavior, separation has been arguably employed to separate States’ interests from victims and groups’ claims into opposites.

The Inter-American System’s most relevant tools, like the petition system and the on-site visits were first developed to work against Member States under dictatorial regimes. Although forged by the due process, the use of such mechanisms produced a standard of separation, which projected over Member States respondent roles in almost every situation. With the democratic return, the persistent gap between States’ commitment and compliance with the Inter-American decisions exposed how such stark division counterplayed the system’s efforts as the context turned increasingly more pluralistic over time.

It took some time for the Inter-American system to operationalize the idea that cooperation with Member States could work as a more suitable strategy to promote and protect human rights, since it involves the diversification of roles played by States. More than exclusively respondents, States can perform negotiator, proponent and supervisor roles at the Inter-American System. At least two relevant transition points towards cooperation have already been set in the Inter-American System. First, the friendly settlement procedure opened venues for dialogue between petitioners and State in the reach of agreements on reparation measures. Second, the monitoring procedure, launched by the Court’s jurisprudence, foresees hearings, follow up meetings and other tools to channel frequent communication with States, victims and groups. Additionally, the publicity given by the Court to the monitoring decisions allows external control from other participants of the Inter-American System. Together, these cooperative mechanisms significantly broadened, in number and quality, the dialogue and interaction between the Inter-American bodies and its participants.

Yet, the transition from separation towards cooperation mode at the Inter-American system remains incomplete. The friendly settlement procedure has been used with irregular,

albeit increasing frequency (Ziccardi, 2015). On the other hand, the Commission is still less transparent concerning the publicity of its monitoring over recommendations. Comparing to the Court, which cumulates on its website the releasing of case monitoring reports every once a decision is reached; the Commission lists the compliance status of some recommendations in the annual report only. Such transparency conditioning hinders timely external assessments of the Commission's agenda power at passing forward or lifting aside some cases. The Forum could make the difference in the two cases. While hosting Member States in a joint context of peer interaction in the presence of a broad audience, the Forum enables public scrutiny about State's performance in the Inter-American System. Assuming the best, Member States can reinforce commitments and learn through best practices. Contrariwise, States' embarrassing reactions (no show, unprepared representation, lack of commitment and/or knowledge) promote self-embarrassment in a collective and diffused environment. The Forum inaugural meeting displayed some good practices sharing on friendly settlements, as well as some self-embarrassment and, subsequently, collectively reinforced and immediate disapproval.

### 3. THE FORUM'S INSTITUTIONAL PRACTICE: WHAT TO EXPECT?

Latin America has been built upon tragic experiences and, above all, upon its ability to produce innovative norms in the human rights field- although such positive identity trait often stays covered by harmful ones. Research shows that Latin American countries were leading forces in the early moves towards what, decades later, turned out to be the global human rights system (Sikkink, 2017; Carozza, 2003; Glendon, 2003). The American Declaration of the Rights and Duties of Man is, by far, the best-known historical landmark of the region's pioneering, although more recent examples abound as well.<sup>6</sup> The Forum enhances the idea that Latin America has been a step forward in regards to human rights norms entrepreneurship. Periodical institutional reflections - by the way, another Latin American blueprint - might burst even further innovation and action. All in all, more than dealing with the 'daily bread', human rights systems need strategic vision and assessment through public and transparent dialogue to remain meaningful.

In order to corroborate with the region's historic leadership on human rights, the following editions of the Forum must address at least two substantive challenges. First, absorbing the diversity of voices, especially those from civil society and academy, the last one, underrepresented during the inaugural and following gatherings. The solution involves expanding (in number) and diversifying (as for the origin) the spokesmen of these voices. Representatives of civil society bring evidence-collecting and handy experience; while academics lengthy analytical skills and trained research teams. Research on the relationship between expertise and policy has stressed the essential role played by knowledge as means of enhancing the legitimacy of international organizations (Littoz-Monnet, 2017).

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<sup>6</sup>Such as: the Inter-American Convention against Corruption (1996), the OAS General Assembly Resolution on Human Rights, Sexual Orientation and Gender Identity (2010) and the Inter-American Convention on the Protection of the Elderly (2015).

Second, debating politically sensitive issues in public fora raises the expectancy for faster reaction. The Forum's agenda predicts which issues the Inter-American system acknowledges and desires to advance. However, articulation and delivery takes time. Let's take the case of corruption for instance. In 2017, taking notice of the topic in the Hall of the Americas<sup>7</sup> during the Forum lacked transparency. Since the topic was mostly discussed behind closed doors, it rested unclear what would be the line of action to deal with the issue. At the II Forum, in Bogotá, corruption showed up once again in the agenda, as the first panel to discuss "Corrupción, Movilidad, Justicia: Los Principales Desafíos de los Derechos Humanos en las Américas" among experts.<sup>8</sup> The III Forum in Quito repeated the same *modus operandi*.<sup>9</sup> However, it was not until the end of 2019, when the Commission released the Report "Corruption and Human Rights", previously informed by an additional consultancy to the civil society through an online Questionnaire.<sup>10</sup> Notwithstanding this document, that adds to the pioneering Inter-American Convention against Corruption (1996), the link between corruption-democracy-human rights remains to be tightened (Lohaus, 2015).<sup>11</sup> Specific jurisprudence can provide such distinguished bond.<sup>12</sup> It will not be long before more concrete cases hit the Inter-American System, given the numerous corruption scandals and incalculable democratic and human rights violations directly linked to unlawful practices. As a warm up, the Inter-American System could reinforce its apparatus of guarantees, such as the presumption of innocence, freedom of the press and democratic rules. The Advisory Opinion on "Democracy and Human Rights in the Context of Impeachment" requested in 2017 by the Commission's Executive Secretariat could be the impetus for the Court to add an important interpretative block on the foundational stones of the Inter-American Convention against Corruption and the Inter-American Democratic Charter (2001).

By reacting to these inevitable challenges, there remain few doubts that the Forum, as a novel institutional practice at the Inter-American System counts with exceptional conditions to stand up to current human rights recoils in the region. Periodical, transparent and public institutional reflections can be 'the elixir of long life', when bringing update and meaningfulness to the Inter-American System. As such, the Forum adds to the Inter-American System by keeping it as a feasible regional perspective.

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<sup>7</sup> The Hall of the Americas is one of the meeting rooms at the OAS main building in Washington, D.C.

<sup>8</sup> COLOMBIA. Procuraduría General de la Nación. *Agenda del Foro Interamericano de Derechos Humanos Segunda Edición*. Available at: <[https://www.procuraduria.gov.co/portal/media/file/foro/68\\_AGENDA%20Foro%20Interamericano%20DDHH.pdf](https://www.procuraduria.gov.co/portal/media/file/foro/68_AGENDA%20Foro%20Interamericano%20DDHH.pdf)>. [Access: 26 Jan. 2020].

<sup>9</sup> OAS. Inter-American Commission on Human Rights. *Agenda del Foro Interamericano de Derechos Humanos Tercera Edición*. Available at: <<http://www.oas.org/es/cidh/docs/pdfs/2019/ForoInteramericano-Agenda.pdf>>. [Access: 26 Jan. 2020].

<sup>10</sup> OAS. Inter-American Commission on Human Rights. *Corrupción y Derechos Humanos: estándares interamericanos*. Available at: <<http://www.oas.org/es/cidh/informes/pdfs/CorrupcionDDHES.pdf>>. [Access: 26 Jan. 2020].

<sup>11</sup> In 2017, the Commission published the Resolution 1/17 on Human Rights and the struggle against Impunity and Corruption. In 2018, it published Resolution 1/18 on Corruption and Human Rights, stated as 'a first comprehensive approach on the subject'. Available at: <<https://www.oas.org/es/cidh/decisiones/pdf/Resolucion-1-18-es.pdf>>. [Access: 21 Jan. 2020].

<sup>12</sup> So far, the Court has tackled corruption indirectly in the cases Andrade Sálmon vs. Bolivia, Ramírez Escobar vs. Guatemala and Morales Díaz vs. Colombia.

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