

FINAL COMMENTS

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I would like to focus my comments on two issues. The first concerns the practical means to implement the rights contained in the American Convention and Declaration. The second concerns Canada's role in the OAS human rights scheme.

The previous speakers on this panel have described the potential strength of the rights contained in the Inter-American agreements and the often liberal way in which the Inter-American Commission and Court have interpreted those documents. On paper, the results are impressive. I am less sure, however, that the rights are implemented in a way that makes them a practical reality.

Professor Grossman has made an important point concerning the enforcement process in his remarks about the role of NGOs. I agree fully with Professor Grossman that an intermediary is needed between the person who is the victim of a human right violation and the OAS enforcement machinery. Without such an intermediary, there often will be no way for the person complaining to gain access to that machinery.

Education about human rights enforcement can serve various purposes. It can inform people not only about the OAS process but also about the non-governmental organizations that can serve as an intermediary. It can also help to exert moral suasion on governments. No matter how well reasoned, the decisions of the Commission and the Court will have little effect if they are not disseminated in those areas where violations are occurring.

In assessing the implementation of the rights, we must take account of the resources that are available to the Commission. Dr. Márquez remarked upon the limited resources of the Commission. Perhaps it is time to think seriously about whether we are asking the impossible of a staff that is too small, and to consider ways of expanding those resources. Limited resources necessarily lead to delays and to the fact that some complaints must be assigned low priority. The result is that complainants become discouraged. Human rights commissions in Canada face a similar backlog of cases, and our experience shows how damaging these delays can be

to public confidence in the enforcement process. I would hope that the OAS can find the resources necessary to avoid such public cynicism.

Another challenge is the integration of international protection into the domestic legal framework. Cases before the Commission or the Court will cause little sustained change internally if they are perceived by governments as an occasional bolt of lightning that is unlikely to recur for some time. Instead, the rights in the Declaration and the Convention should be perceived as a steady source of protection that establishes a minimum standard against which to measure the conduct of governments and of public officials on a day-to-day basis.

I would like to turn to the question of Canada's role within the OAS. I agree with other speakers about the need to avoid preconceptions about a case based on the country of origin of the complaint. In this regard, though Canada is often perceived as a democracy with a system of domestic protection of human rights, it seems very likely that Canadians will use the OAS machinery to air grievances against their government. That would be consistent with the experience concerning the United Nations International Covenant on Civil and Political Rights and the Optional Protocol. In particular, issues concerning Canada's treatment of aboriginal peoples and of cultural and linguistic minorities are likely to result in complaints. Canada's treatment of these groups is hardly a source of pride, and we will have to make efforts to bring domestic conduct into compliance with the standards set by the Declaration and Convention.

I hope, however, that Canada can also make a positive contribution to the OAS machinery for protecting human rights. Canada is a latecomer to the OAS, and one cannot pretend that Canada will play a powerful strategic or military role within the organization. On the other hand, human rights is an area in which Canada could realistically make a significant contribution. In my opinion, this should be a priority for the Canadian government.

Recent developments within Canada would help us to assume such a role. A Charter of Rights and Freedoms was added

to our Constitution in 1982. The fact that we have only eight years of experience with a charter of rights might be viewed as a disadvantage. However, in some respects, the recent adoption of the Charter may help Canada to take a leadership role within the OAS in dealing with human rights issues. The process that led to the Charter is still fresh in the minds of many policy-makers within Canada. We have had to consider mechanisms for introducing new rights into an old legal system and about strategies for changing the behaviour of well-entrenched institutions. In many ways, this experience parallels the attempts of the OAS to modify domestic legal systems on the basis of the rights contained in the Declaration and the Convention.

A new Charter has also forced us to think hard about the nature of the rights that we have added to our constitution and about effective means of implementing those rights in the current environment. The recent enactment of our Charter means that we do not have a large body of precedent and must think anew about the meaning of the concepts underlying these rights.

For example, in interpreting the equality rights provisions of our Charter, we have come to realize that a sharp division between civil and political rights, on the one hand, and social and economic rights, on the other, may not be helpful. The Supreme Court of Canada seems to have recognized that identical treatment of individuals or groups facing different conditions and having different needs can actually undermine social and economic equality. The Court has suggested that equality must be measured against the background of existing social and economic disparities.

One consequence is that special programs designed to reduce social and economic disparities can be seen as promoting equality, though the program does not afford comparable benefits to those who already have more than their share of societal advantages. It has been argued that social and economic initiatives to reduce disparities may be not only permissible, but may be required by the Charter equality rights. From this point of view,

the distinction between civil and political rights and social and economic rights makes no sense at all.

The change in judicial reasoning has been especially dramatic with regard to the equality rights of women. For example, the Supreme Court of Canada has held that the exclusion of pregnancy from an employer's health benefits package constitutes sex discrimination. The Court overruled an earlier decision that had allowed such an exclusion. The Court also noted that pregnancy is essential for the continuance of society and that equality demands that the costs of pregnancy be shared more equally by men and women.

An area of challenge for us concerns the rights of aboriginal peoples. I certainly would not want to suggest that Canada serves as a model in this regard. But the 1982 amendments to the Constitution of Canada have forced us to begin to consider human rights principles in the context of communities that want self-determination rather than assimilation into the mainstream. The rights of the francophone minority within Canada raises issues that bear some similarity to the claims of aboriginal peoples, though of course the two situations also differ in many respects. The need to consider human rights in the context of cultural and linguistic groups that want to maintain their distinctiveness may find parallels in other countries of the Americas, and Canada's growing experience may be of assistance.

In addition to the lessons, both positive and negative, that Canada's domestic experience may bring to the OAS, I think that the Canadian government should contribute in a more immediate material way. One obvious step would be to provide funds to meet the resource needs of the Commission that were discussed earlier. The Commission has been consistently under-funded, and a significant Canadian contribution would be helpful in itself and, it is hoped, would encourage other countries to increase their support.

I also believe that Canada should play a role in increasing the resources of NGOs. Professor Grossman has convincingly demonstrated the need for strong NGOs. It seems to me that the

Canadian government could play a useful role in providing financial support and in providing support for contacts between NGOs in Canada and in other countries. Clearly, such initiatives must be structured so as to protect fully the independence of the organizations concerned.

I hope that our Human Rights Centre at the University of Ottawa can serve as a communications link between NGOs in the Americas and Canadian organizations and resources. A part of our mandate is to work with other organizations to share information about activities, strategies, and techniques for organizational development techniques. We presently are engaged in a joint project with the Legal Resources Foundation of Zimbabwe to develop a public legal information program, and we would like to participate in similar projects in the Americas in the future.

In January, 1991, Human Rights Internet, which formerly was located at Harvard University, moved to Canada and joined the Human Rights Centre at the University of Ottawa. Internet publishes the HRI Reporter which provides news and bibliographic information about the work of human rights NGOs around the world. It also publishes directories of human rights organizations. The combined library collection of Internet and the Human Rights Centre is a rich resource. Our objective is to find better ways of making this resource available to NGOs and researchers in other countries as well as in Canada.

Thank you very much.