



Ambassador Carmen Lomellin
Deputy Permanent Representative William J. McGlynn

U.S. Permanent Mission to the Organization of American States
WHA/OAS Bureau of Western Hemisphere Affairs
U.S. Department of State
2201 C Street, NW, Room 5914
Washington, DC 20520

RE: Strengthening Process of the Inter-American Human Rights System

November 19, 2012

Honorable Ambassador Lomellin and Deputy Permanent Representative McGlynn,

We, the undersigned, write in regards to the strengthening process of the Inter-American Human Rights System (IAHRS or System). Conscious of the crucial role the IAHRS plays in promoting and protecting human rights in the region, we share your concerns about this process and we welcome your expressions in favor of protecting the autonomy and independence of the Inter-American Commission on Human Rights (IACHR or Commission). The U.S. has been a strong ally of the IAHRS in this process. Nevertheless, we believe the U.S. is in a position to do more. We therefore suggest the following five recommendations to increase and reinforce U.S. support for the IAHRS.

First, we recommend that the United States lead by example. This entails complying with recommendations made by the Commission and ratifying the American Convention on Human Rights and other regional human rights treaties. Second, the U.S. should increase efforts to raise public awareness about the importance of the IAHRS and about the government's commitment to the System. Third, the U.S. should push for greater participation by civil society organizations before Organization of American States (OAS) political organs, including the Permanent Council and the General Assembly. Fourth, the U.S. should lead the way in providing sufficient resources to the IAHRS. Finally, the U.S. should continue to support the autonomy and independence of the Commission by characterizing as non-binding any and all recommendations the Permanent Council makes in this process.

1) The U.S. should lead by example.

When Amb. Lomellin addressed the 42nd OAS General Assembly in Cochabamba, Bolivia, she noted that “The Commission has been, and remains, an important voice in addressing human rights situations in all countries of the hemisphere, including the United States.”¹ This support, however, is undermined by the fact that the U.S. does not communicate the important role the Commission plays in addressing human rights violations in the U.S.

In that same General Assembly in Cochabamba, the governments of Ecuador, Venezuela, Bolivia, and Nicaragua publicly criticized the Commission for allegedly turning a blind eye to human rights violations in the United States.² This reflects broader sentiments regarding reciprocity. The IAHRs remains vulnerable to criticisms on the basis that not all Member States are bound by all regional human rights treaties or subject to the authority of the Commission. Indeed, the lack of U.S. compliance with Commission findings and the lack of awareness impact public perception within the region about the independence and relevance of the Commission and of the OAS in general.

As you are aware, a small but powerful group of Member States has suggested that the IAHRs be substituted by an alternative regional system that excludes the U.S. (and Canada).³ For example, the Community of Latin American and Caribbean States (CELAC), which excludes the U.S. and Canada, was created in 2010⁴. Ecuador has suggested the creation of a human rights supervisory organ within UNASUR⁵. Other regional initiatives, such as ALBA⁶ and the *Conferencia Iberoamericana de Jefes de Estado y de Gobierno*⁷ are also gaining momentum. If these initiatives succeed, the achievements of the IAHRs may be undermined and the positive U.S. influence in the region will be jeopardized.

¹ Remarks by Amb. Carmen Lomellin to the 42nd OAS General Assembly in Cochabamba, Bolivia, on June 5, 2012, available at <http://www.state.gov/p/wha/rls/rm/2012/191839.htm>

² President Evo Morales stated “*Si no quiere velar los derechos humanos en Estados Unidos, mejor que desaparezca la Comisión Interamericana de Derechos Humanos*”. See *El Nuevo Herald*, June 7, 2012, “*Andrés Oppenheimer: La ofensiva contra los derechos humanos*”, available at <http://www.elnuevoherald.com/2012/06/06/1222182/andres-oppenheimer-ofensiva.html>

³ TIME Magazine (World), December 2, 2011, “Latin America’s CELAC Summit: A Definitive Rejection of the U.S.?” , available at <http://world.time.com/2011/12/02/latin-americas-celac-summit-a-definitive-rejection-of-the-u-s/#ixzz20uGty7Sg>

⁴ See <http://www.parlatino.org/en/proyecto-de-la-celac.html>

⁵ See <http://www.unasursg.org/>

⁶ See <http://www.alianzabolivariana.org/>

⁷ See also the *Conferencia Iberoamericana de Jefes de Estado y de Gobierno*, available at <http://segib.org/conferencia-es/> and <http://www.cumbreiberoamericana.es/cumbreiberoamericana>

We therefore recommend that the U.S. take further action to restore public confidence in the IAHRs (and in the OAS) and bolster its independence and effectiveness. To do so, the U.S. should engage more actively with the Commission to foster compliance with its recommendations in contentious cases and precautionary measures. By improving its own domestic record, the United States bolsters its credibility as a voice for meaningful and effective reforms that will advance human rights in all OAS Member States.

We emphasize, too, the importance of ratification of the American Convention on Human Rights by the U.S. (and all OAS Member States). Unless and until the U.S. ratifies the American Convention and other regional human rights treaties⁸, its authority to speak as a human rights leader in the region will be subject to criticism.

2) The U.S. should increase efforts to raise public awareness about the importance of the IAHRs and about the government's commitment to the System.

We appreciate that the U.S. often engages with the Commission on contentious petitions, requests for precautionary measures, thematic hearings, and working meetings⁹. We are encouraged, too, to hear about ongoing outreach and engagement with federal agencies. However, there is a fundamental lack of awareness about the Commission among the general public. This is due, in part, to the fact that the U.S. publishes little to no official information about specific cases or issues addressed by the Commission. Even those of us who actively engage with the IAHRs find it difficult to locate information about specific U.S. responses to cases and issues addressed by the Commission. This lack of publicly available information raises concerns about transparency and signals that the U.S. is not fully engaged with the IAHRs. It also gives the impression that the U.S. does not hold itself to the same standards as other countries in the region.

The fact that Washington D.C. is the seat for the OAS and for the Commission, the perception that the U.S. does not respond to Commission recommendations, and the lack of ratification of regional human rights treaties—, taken together, reinforce concerns of U.S. exceptionalism with the OAS and undercut U.S. statements about the

⁸ These include the following: the Inter-American Convention to Prevent and Punish Torture; the Protocol of San Salvador; the Inter-American Convention on the Forced Disappearance of Persons; the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women, and the Inter-American Convention on the Elimination of all Forms of Discrimination Against Persons with Disabilities,

⁹ For example, according to the Commission's 2011 Annual Report, the United States was the second country with the most precautionary measures (with a total of eleven) ordered against it. See 2011 Annual Report of the Inter-American Commission on Human Rights, Chapter 3C1 paras. 73-84, available at <http://www.oas.org/en/iachr/docs/annual/2011/Chap3C1.doc>.

importance of the IAHRs. These concerns have a negative impact on U.S. authority to speak on human rights in the region as well as our advocacy on behalf of those subject to human rights violations within OAS Member States.

This Administration has an opportunity to change public opinion on this issue. By fully engaging with the IAHRs, this Administration can show the region that the protection and promotion of human rights is a priority not just of U.S. foreign policy, but of its domestic policy as well.

This renewed engagement with the IAHRs must be coupled with a public awareness campaign aimed at domestic and foreign audiences. A public awareness campaign that focuses on the importance of the IAHRs and on U.S. commitment to actively engage with the System will provide much needed support for the Commission at a time when its effectiveness is being questioned by other countries in the region. Such a campaign could highlight the fact that United States citizens have served as presidents and members of the Commission and the Court, for example. It could also highlight U.S. support for the Commission's rapporteurships, including the creation of a new unit to address the rights of sexual minorities (LGBTI). Raising awareness of these facts would not only have a positive effect on public perception of the System – and the role of the U.S. in the region – it would also provide support for the work of human rights advocates in the U.S. and, most importantly, it would ultimately benefit victims of human rights violations in the region and in the U.S.

One way in which the U.S. could raise the profile of the IAHRs is by incorporating in its U.N. treaty and UPR reports references to the Commission's decisions and reports on similar issues. The U.S. ICCPR report, for example, discusses issues including domestic violence, immigration, detention and due process, all of which have been addressed by the Commission in its recent reports, thematic hearings, and decisions. Adopting a more holistic approach to U.S. human rights reporting and implementation can not only help raise awareness about the IAHRs, it can also bolster awareness of U.S. engagement with the Commission and facilitate more comprehensive and coordinated domestic human rights compliance. This type of integration offers an opportunity to create a more effective model for addressing human rights concerns raised in both regional and international fora.

The State Department should lead the way by educating not only the general public, but also federal, state, and local officials regarding U.S. obligations under international and regional human rights law. Transparent inter-agency coordination is also a vital step to improve compliance with the Commission's recommendations. Additionally, the U.S. could create fellowships and promote opportunities for U.S. law students to engage with the Commission and its rapporteurships, particularly on issues that the U.S. has

traditionally supported, such as freedom of expression, women, children, racial discrimination, and LGBTI.

The results of the last general election and the triumph of several state initiatives aimed at protecting people's rights in these and other areas should motivate the U.S. to continue its leadership role in the protection and promotion of such human rights by providing students with opportunities for engagement with the Commission (and the Court). Such public awareness and engagement efforts will demonstrate U.S. commitment to the IAHRs and will ultimately strengthen the System and improve public perception and foreign relations.

3) The U.S. should push for greater participation by civil society organizations before OAS political organs

The OAS Permanent Council and General Assembly Civil have severely limited civil society participation in the current reform process. Despite U.S. support for the work of civil society organizations within these OAS political bodies, most discussions about the current process are taking place in "informal" meetings behind closed doors and without meaningful transparency or civil society participation. For example, the Permanent Council announced that it would accept observations from civil society organizations regarding the recommendations contained in the Working Group's report, but the Permanent Council placed a 150-word limit on each observation¹⁰. These barriers to meaningful participation are unacceptable. Such limitations on the participation of civil society before the Permanent Council raise serious questions about the effectiveness and credibility of this process. This Administration should continue to press for greater transparency and increased participation by civil society organizations in all matters that could affect the strength, independence, and autonomy of the IAHRs.

4) The Commission needs sufficient funding

If there is one issue on which all relevant actors seem to agree, it is that the Commission is severely underfunded. Nevertheless, in its October 31, 2012 letter to the Permanent Council, the U.S. placed more emphasis on the need for more efficient use of current and existing resources by the Commission than on the need for more funding. Although the efficient use of resources will always be a concern and is an area that can certainly be improved, this message takes emphasis away from the key fact that the

¹⁰ See *Request for the Inter-American Commission on Human Rights, the OAS General Secretariat, Civil Society Organizations, the Inter-American Court of Human Rights, and the Inter-American Juridical Committee to forward their proposals for implementing the recommendations of the Working Group, by October 31, 2012* CP/doc.4787/12 rev. 4 corr. 1 add. 2, available at <http://scm.oas.org/IDMS/Redirectpage.aspx?class=CP/doc.&classNum=4787&addendum=2&lang=e>

Commission does not currently receive sufficient funding to effectively carry out its mission.

In its submission to the Permanent Council, the U.S. suggested that the Commission look to other “mass claims” processing mechanisms for guidance on how to better manage their resources. This suggestion fails to take into account that other regional human rights bodies, like the European Court of Human Rights (ECtHR), for example, have substantially more resources than the Inter-American Commission and Court. The Council of Europe, for example, assigns 22% of its budget for the ECtHR, while the OAS assigns less than 8% of its budget to the Commission and Court. The ECtHR and the IACHR each supervise the protection of human rights of over 850 million people. To achieve this mandate, the ECtHR receives almost \$100 million¹¹ while the IACHR receives \$4.3 million from the regular OAS budget¹². Still, the IACHR has done a remarkable job of efficiently using its limited resources. The issue then, is not only the effective management of resources, but also the sufficiency of the funding provided to the IACHR.

Although the U.S. provided \$1.5 million to the Commission in 2011, which amounts to 30% of the “direct-funds” given to the Inter-American Commission, Spain, which is a non-OAS Member State that is on the brink of bankruptcy, contributed \$1 million to the Commission¹³. In fact, more than half of the Commission’s budget comes from sources other than the regular OAS budget¹⁴. The IAHRs should not be forced to depend on such outside funding. The U.S., like all OAS Member States, has a duty to contribute more funding to strengthen the IAHRs so that the Commission can comply with its mandate, while also seeking to improve efficiency.

5) The U.S. should support the autonomy and independence of the Commission at the March 2013 Special Session of the OAS General Assembly

We applaud the U.S. for continuing to be an outspoken ally in favor of the autonomy and independence of the Commission. At the General Assembly in Cochabamba, the U.S. showed this support by adding an important footnote to resolution AG/RES. 2761 (XLII-O/12), stating that

The recommendations adopted by the Permanent Council on January 25, 2012 are non-binding and those recommendations directed to the Inter-American Commission on Human Rights (“Commission”) remain within the Commission’s purview to implement, as appropriate, in a manner that strengthens its work. No

¹¹ See <http://www.echr.coe.int/ECHR/EN/Header/The+Court/How+the+Court+works/Budget/>

¹² See <http://www.oas.org/es/cidh/mandato/finanzas/2011esp.pdf>

¹³ www.oas.org/es/cidh/mandato/finanzas/2011esp.pdf

¹⁴ See http://www.oas.org/OASPage/videosasf/2012/03/032812_PVidal_4.wmv

efforts should be undertaken to attempt to force implementation of these non-binding recommendations.¹⁵

Ambassador Lomellin further highlighted this point by adding “Our position has always been that it is up to the Commission to consider and implement, as it sees fit, these non-binding recommendations in a manner that strengthens its work.”¹⁶ We strongly agree with these statements and urge the U.S. to continue its support for the autonomy and independence of the Commission at the 2013 Special Session of the OAS General Assembly by pushing for similar language that characterizes as non-binding any and all recommendations the Permanent Council makes in this process.

There are areas where there may be legitimate disagreement between and among Member States, civil society, and the IACHR - such as the content and scope of chapter IV of the Commission’s annual report – but it is up to the Commission to make such decisions. We share the concerns expressed by Amb. Lomellin that failure to uphold the autonomy and independence of the Commission may “weaken the hard-won authority and legitimacy of the human rights organs of the Inter-American System.”¹⁷

Over the past five and a half decades, the Commission’s work has proven instrumental in protecting and promoting human rights in the region. The U.S. should continue to play an important and influential leadership role in ensuring that the Commission enjoys the autonomy and independence it needs to successfully carry out this mandate.

In conclusion, we welcome and support many of the actions the U.S. has taken to truly strengthen the IAHRs. We encourage the U.S. to take the additional measures outlined in this letter to ensure that the legitimacy of the IAHRs is recognized domestically and internationally. We look forward to working with you and supporting your efforts to implement these recommendations and advance the protection and promotion of human rights in our region.

¹⁵ See AG/RES. 2761 (XLII-O/12) “*FOLLOW-UP ON THE RECOMMENDATIONS CONTAINED IN THE “REPORT OF THE SPECIAL WORKING GROUP TO REFLECT ON THE WORKINGS OF THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS WITH A VIEW TO STRENGTHENING THE INTER-AMERICAN HUMAN RIGHTS SYSTEM”*”, available at http://scm.oas.org/42AG/Documentos/VOL_ENG.doc

¹⁶ Remarks by Amb. Carmen Lomellin to the 42nd OAS General Assembly in Cochabamba, Bolivia, on June 5, 2012, available at <http://www.state.gov/p/wha/rls/rm/2012/191839.htm>

¹⁷ Id.

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